

915  
No. 2459

United States  
Circuit Court of Appeals

For the Ninth Circuit.

THAMES & MERSEY MARINE INSURANCE  
COMPANY, LIMITED, a Corporation,  
Appellant,

vs.

PACIFIC CREOSOTING COMPANY, a Corpora-  
tion,  
Appellee.

Apostles.

Upon Appeal from the United States District Court  
for the Western District of Washington,  
Northern Division.

Filed

SEP 3 - 1914

F. D. Monckton,  
Clerk.



No. 2459

---

United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

THAMES & MERSEY MARINE INSURANCE  
COMPANY, LIMITED, a Corporation,  
Appellant,

vs.

PACIFIC CREOSOTING COMPANY, a Corpora-  
tion,  
Appellee.

---

**Apostles.**

---

Upon Appeal from the United States District Court  
for the Western District of Washington,  
Northern Division.

---



# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Amended Answer of Libelant to the Fifth Interrogatory Propounded to It in this Cause.	34
Answer of Respondent.....	27
Answer of Witness Fred N. Beal, to Direct and Cross Interrogatories Hereto Attached....	58
Answers of Witness M. I. Helman to Direct and Cross Interrogatories Hereto Attached....	50
Answers of Pacific Creosoting Company, a Corporation, to the Interrogatories Propounded to It in This Cause.....	32
Assignment of Errors.....	333
Certificate of Clerk U. S. District Court to Apostles, etc. ....	342
Counsel, Names and Addresses of.....	1
Cross-interrogatories to be Administered to Alexander Wallace .....	102
Cross-interrogatories to be Propounded to Fred N. Beal .....	56
Cross-interrogatories to be Propounded to M. I. Helman .....	47
Cross-interrogatories to be Propounded to E. D. Rood .....	128

Index.	Page
<b>DEPOSITIONS:</b>	
BEAL, F. D. ....	61
Cross-examination .....	75
Redirect Examination .....	89
ROOD, E. D. ....	132
WALLACE, ALEXANDER .....	113
WYLIE, GEORGE H. ....	139
Direct Interrogatories to be Propounded to Fred N. Beal .....	53
Direct Interrogatories to be Propounded to M. I. Helman .....	44
Direct Interrogatories to be Propounded to E. D. Rood .....	125
Direct Interrogatories to be Propounded to Alexander Wallace .....	97
Exceptions to Answer .....	40
Exceptions to Interrogatories Addressed to Libellant .....	37
Exceptions to Libel .....	36
<b>EXHIBITS:</b>	
Exhibit "A"—to Libel—Policy of Insur- ance .....	7
Exhibit "B"—to Libel—Statement of Par- ticular Average on Creosote Oil in Drums, etc. ....	11
Exhibit G. H. W. No. 2—Letter Dated April 19, 1911—Alexander Wallace to Andrew Weir & Co. ....	159
Final Decree .....	318
Interrogatories Propounded to Libellant by An- swer .....	31

Index. Page

Libel .....	3
Memorandum Decision on Exceptions to the Answer and on Exceptions to Interrogatories Propounded by the Respondent.....	323
Names and Addresses of Counsel.....	1
Notice of Appeal .....	332
Notice of Filing Apostles on Appeal and Designation of Parts of Record to be Printed...	344
Opinion on Exceptions to Answer and to Interrogatories Propounded by Respondent....	323
Opinion on Exceptions to Libel.....	319
Opinion on Final Hearing.....	325
Order Extending Time for Procuring Apostles to be Filed on Appeal.....	339
Order on Exceptions to Answer and to Interrogatories .....	42
Order to Transmit Original Exhibits.....	43
Order Waiving Printing of Original Exhibits..	347
Praeceptum for Apostles.....	340
Statement .....	2
Stipulation Extending Time to July 15, 1914 to File Apostles .....	333
Stipulation Re Depositions etc.....	337
Stipulation Waiving Printing of Original Exhibits .....	347
TESTIMONY ON BEHALF OF LIBEL- ANT:	
BARNABY, JOSEPH ROBERT.....	221
Cross-examination .....	225
Redirect Examination .....	227

Index.	Page
TESTIMONY ON BEHALF OF LIBEL-	
ANT—Continued:	
BECKETT, A. M. ....	227
Cross-examination .....	230
Redirect Examination .....	244
DOUGLAS, ROY E. ....	184
Cross-examination .....	188
STEVENS, H. E. ....	164
Cross-examination .....	173
Redirect Examination .....	183
WALKER, FRANK .....	188
Cross-examination .....	195
Redirect Examination .....	218
TESTIMONY ON BEHALF OF RESPOND-	
ENT:	
BAIRD, CAPT. DAVID .....	262
Cross-examination .....	270
GIBBS, S. B. ....	311
Cross-examination .....	314
Redirect Examination .....	316
PREECE, J. J. ....	277
Cross-examination .....	284
TUTTLE, H. C. H. ....	247
Cross-examination .....	251
Redirect Examination .....	259
YEATON, C. R. ....	292
Cross-examination .....	299
Redirect Examination .....	309



*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 4354.

PACIFIC CREOSOTING COMPANY, a Corpora-  
tion,

Libelant,

vs.

THAMES AND MERSEY MARINE INSUR-  
ANCE COMPANY, LTD.,

Respondent.

**Names and Addresses of Counsel.**

EDMUND B. McCLANAHAN, Esq., 1101 Mer-  
chants Exchange Building, San Francisco, Cali-  
fornia;

S. HASKET DERBY, Esq., 1101 Merchants Ex-  
change Building, San Francisco, California;

EDWARD BRADY, Esq., 1308 Alaska Building,  
Seattle, Washington;

GEORGE H. RUMMENS, Esq., 1308 Alaska Build-  
ing, Seattle, Washington;

Proctors for Respondent and Appellant.

W. H. BOGLE, Esq., 610 Central Building, Seattle,  
Washington;

CARROLL B. GRAVES, Esq., 610 Central Build-  
ing, Seattle, Washington;

2 *Thames & Mersey Marine Ins. Co., Ltd.*,

E. T. MERRITT, Esq., 610 Central Building,  
Seattle, Washington;

LAWRENCE BOGLE, Esq., 610 Central Building,  
Seattle, Washington;

Proctors for Libelant and Appellee. [1\*]

---

[Title of Court and Cause.]

**Statement.**

**TIME OF COMMENCEMENT OF SUIT.**

August 10, 1910.

**NAMES OF PARTIES TO SUIT.**

Libelant: Pacific Creosoting Company, a corpora-  
tion.

Respondent: Thames and Mersey Marine Insurance  
Company, Ltd.

**DATE OF FILING RESPECTIVE PLEAD-  
INGS.**

Libel filed August 10, 1910.

Exceptions to Libel filed October 22, 1910.

Answer of respondent to Interrogatories filed Janu-  
ary 31, 1911.

Exceptions to Answer and Interrogatories filed  
February 16, 1911.

Answer of libelant to Interrogatories filed May 16,  
1911.

Amended Answer to Fifth Interrogatory filed May  
26, 1911.

Defendant in above cause has not been arrested, bail  
has not been taken, nor property attached.

Time of trial March 5, 1913.

---

\*Page-number appearing at foot of page of original certified Record.

Judge: Honorable Jeremiah Neterer.

Final Decree by Honorable Jeremiah Neterer, filed  
February 26, 1914.

Notice of Appeal with Admission of Service filed  
February 27, 1914. [1½]

---

*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 4354—IN ADMIRALTY.

PACIFIC CREOSOTING COMPANY (a Corpora-  
tion),

Libellant,

vs.

THAMES & MERSEY MARINE INSURANCE  
COMPANY, LTD.,

Respondent.

**Libel.**

To the Judges of said Court:

The Libel and Complaint of PACIFIC CREOSOTING COMPANY, a corporation, organized under the laws of the State of Washington, and having its principal place of business in Seattle, in said District, against the THAMES & MERSEY MARINE INSURANCE COMPANY, LTD., a corporation, organized under the laws of Great Britain, and doing business in the State of Washington, in said District, in a cause of contract, civil and maritime, alleges as follows:

I.

That the libellant, being owner of a cargo of creos-

sote on or about the second day of June, 1908, caused the same to be shipped on the British bark "Sardhana," then lying at London, England, to be therein carried to Eagle Harbor, in the State of Washington, there to be delivered to this libellant, it paying freight for the same.

## II.

On the second day of June, 1908, the libellant, in London, [2] England, through its agents, effected an insurance with the respondent on said cargo of creosote in drums, including packages and freight advanced, valued at Seven Thousand Four Hundred Fifty Pounds, in the sum of Nine Hundred Thirty-two Pounds, and on the same day through its said agents paid respondent the premium on said risk, to wit: Forty-four Pounds, Eighteen Shillings and Ten Pence, which sum was accepted by the respondent, and a policy of insurance issued and delivered to libellant, a copy whereof is hereto annexed marked "A" and made a part of this libel.

## III.

On or about the last mentioned date the said bark "Sardhana," with said cargo on board, set sail upon her said voyage, and while in the course thereof, high gales and heavy seas were encountered, in which the ship rolled and labored heavily, and to such an extent that the cargo worked and became adrift, and many of the drums containing said creosote were damaged and a large quantity of said creosote escaped in the hold of the ship and was lost. That said ship arrived at the port of Eagle Harbor with her cargo badly damaged by the perils of the sea en-

countered on said voyage, and on November 18th, while lying in said port of Eagle Harbor and before discharging said cargo, a fire broke out in the after-'tween-decks of said ship, and burned the bulkhead forward of the lazaretto, the door thereof and a considerable portion of dunnage and other parts of said ship; that outside assistance was procured, and, after considerable difficulty the fire was extinguished. That on November 21, while discharging said cargo from said vessel, a lighter alongside of the ship, which was being used in discharging said cargo, and which was then loaded with 272 drums of said creosote, was capsized during a heavy gale, and the [3] said cargo on board the said lighter was precipitated into the sea; and heavy expenses were incurred by libellant in salving said cargo so lost from said lighter; that 268 drums thereof were recovered by said salvage operations, and the other four drums were lost. That the master caused said ship and cargo to be surveyed, and it was found that 741 drums were damaged and worthless; that 56,267.2 gallons of creosote were found to have been lost, and four additional drums filled with creosote were also found to be lost, all of the value of One Thousand Six Hundred Eighty-five Pounds, Twelve Pence; that libellant, in laboring to save said cargo lost from said capsized lighter, expended and paid out the sum of \$1377.95, making a total loss and damage to said cargo, including said salvage expenses, of One Thousand Nine Hundred Sixty-nine Pounds, Two Shillings, Seven Pence—equivalent to \$9,570 in gold coin of the United States.

IV.

The said damage to the cargo was caused entirely by the tempestuous weather aforesaid, and is not in any wise attributable to any unseaworthiness of the vessel. The damage to said cargo and the expenses incurred by libellant in salving same were such as are contemplated in and insured by the policy aforesaid.

V.

By reason of the premises, a general average adjustment was made, of which the respondents had notice, under which the respondent is liable to pay the libellant \$1,197.20, being the insurance due upon the part of the cargo lost as aforesaid, and the sue and labor expenses incurred by libellant as aforesaid.

A copy of the said general average adjustment is hereto [4] annexed marked "B" and made a part of this libel.

VI.

The libellant has demanded of the respondent the said sum of \$1,197.20, but respondent has refused to pay the same, or any part thereof, and the whole amount thereof is still due.

All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this court.

WHEREFORE, the libellant prays that a citation, according to the course and practise of this Honorable Court, in causes of admiralty and maritime jurisdiction, may issue to the said Thames & Mersey Insurance Company, Ltd., citing and admon-

ishing it to appear and answer all and singular the matters aforesaid; and that the Court will award judgment in favor of libellant for the sum of \$1,197.-20 aforesaid, with interest and costs, and will give to the libellant such other and further relief as in law and justice it is entitled to receive.

PACIFIC CREOSOTING COMPANY,  
By H. R. ROOD,  
Vice-Pres.

BOGLE & SPOONER,  
Proctors.

United States of America,  
Western District of Washington.

H. R. Rood, being sworn, states that he is Vice-pres't of Pacific Creosoting Company, the libellant in the above and foregoing libel; that he has read the foregoing libel, knows the contents thereof and believes [5] the same to be true.

H. R. ROOD.

Sworn to and subscribed before me this 10th day of August, A. D. 1910.

[Seal] H. E. STEVENS,  
Notary Public in and for the State of Washington,  
Residing in Seattle. [6]

**Exhibit "A" [to Libel—Policy of Insurance].**

No. 7284.

£ 932.

THAMES and MERSEY MARINE INSURANCE  
COMPANY, LIMITED.

WHEREAS, W. R. Lyon Lohr & Co. &/or  
as agents have represented to the THAMES and

MERSEY MARINE INSURANCE COMPANY, Limited, that they are interested in or duly authorized as Owner, Agent or otherwise to make the Insurance hereinafter mentioned and described with the said Company and have promised or otherwise obliged themselves to pay forthwith for the use of the said Company at the Office of the said Company the sum of Forty-four pounds eighteen shillings and ten pence, as a premium or consideration at and after the rate of Ninety Shillings per cent for such Insurance.

NOW THIS POLICY OF INSURANCE WITNESSETH That in consideration of the premises and of the said sum of Forty-four pounds eighteen shillings and ten pence the said Company promises and agrees with the said Co. their Executors, Administrators and Assigns that the said Company will pay and make good all such Losses and Damages hereinafter expressed as may happen to the subject matter of this Policy and may attach to this Policy in respect of the sum of NINE HUNDRED and THIRTY-TWO Pounds hereby insured which insurance is hereby declared to be upon CREOSOTE in drums including packages and FREIGHT ADVANCED valued at £7450 in the ship or vessel called the "Sardhana" whereof ——— is at present Master or whoever shall go for Master of the said ship or vessel lost or not lost at and from LONDON to EAGLE HARBOR, PUGET SOUND, or held covered at a premium to be arranged.

WARRANTED free from particular average, unless the vessel or craft or the interest insured be



stranded, sunk or on fire, or in collision with ice or any substance other than water (floating or non-floating), the collision to be of such a nature as may reasonably be supposed to have caused or lead to damage of cargo, or vessel put into a port of refuge or distress and discharge part or whole cargo, each craft or lighter *to deemed* a separate insurance, but to pay warehousing, forwarding and special charges if incurred, as well as partial loss arising from transshipment.

General average and salvage charges payable according to foreign statement or York-Antwerp rules, or 1890 Rules, if in accordance with the contract of affreightment. Including all risks of craft and boats. Including negligence and all liberties as per bill of lading and/or Charter Party.

Including all risks of transshipment and of craft, ligherage and/or any other conveyances, from the warehouse until on board the vessel, and from the vessel until safely delivered into warehouse, or destination in the interior, or of fire while awaiting shipment.

In case of deviation, change of voyage, or additional risk not specified, to be held covered upon terms to be arranged.

Including the Risk of craft, and/or raft to and from the vessel.

WARRANTED free of capture, seizure and detention and the consequences thereof, or any attempt thereat, piracy excepted, and also from all consequences of hostilities or warlike operations, whether before or after declaration of War. [7]

AND the said Company promises and agrees that the insurance aforesaid shall commence upon the freight and goods or merchandize aforesaid from the loading of the said goods or merchandize on board the said ship or vessel at as above and continue until the said goods or merchandize be discharged and safely landed at as above.

AND that it shall be lawful for the said ship or vessel to proceed and sail to and touch and stay at any ports or places whatsoever in the course of her said voyage for all necessary purposes without prejudice to this insurance.

AND touching the adventures and perils which the capital stock and funds of the said company are made liable unto or are intended to be made liable unto by this insurance they are of the seas men of war fire enemies pirates rovers thieves jettisons letters of mart and counter-mart surprizals takings at sea arrests restraints and detainments of all Kings, Princes and people of what Nation condition or quality soever barratry of the Master and Mariners and of all other perils losses and misfortunes that have or shall come to the hurt detriment or damage of the aforesaid subject matter of this insurance or any part thereof. AND in case of any loss or misfortune it shall be lawful to the insured their factors servants and assigns to sue labor and travel for in and about the defence safeguard and recovery of the aforesaid subject matter of this insurance or any part thereof without prejudice to this insurance the charges whereof the said company will bear in proportion to the sum hereby insured. AND it is ex-

pressly declared and agreed that no acts of the insurer or insured in recovering saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment. AND it is declared and agreed that corn fish salt fruit flour and seed are warranted free from average unless general or the ship be stranded sunk or burnt, and that sugar tobacco hemp flax hides and skins are warranted free from average under five pounds per centum unless general or the ship be stranded sunk or burnt and that all other goods also freight are warranted free from average under three pounds per centum unless general or the ship be stranded sunk or burnt.

IN WITNESS WHEREOF the undersigned on behalf of the said company have hereunto set their hands in London, the second day of June, 1908.

Examined W—

E. S. GEDZ,

for Director.

Countersigned—

C. E. DICKINSON,

for Secretary. [8]

**Exhibit "B" [to Libel—Statement of Particular Average on Creosote Oil in Drums, etc.].**

STATEMENT

of

PARTICULAR AVERAGE

on

CREOSOTE OIL in DRUMS.

CASE of the BRITISH BARK "SARDHANA"  
from LONDON May 30th, 1908, to EAGLE  
HARBOR.

1908.

May 30th: This ship sailed from London with a

cargo of creosote in drums, bound to Eagle Harbor. High gales and heavy seas were encountered in which the ship rolled and labored heavily and to such an extent that the cargo worked and became adrift. Some of the drums were damaged and the creosote escaped into the hold of the ship.

November 9th: The ship arrived at Eagle Harbor.

November 18th: After part of the cargo had been discharged a fire broke out in the after 'tween-decks. An alarm was given. Outside assistance was procured and after considerable difficulty the fire was extinguished. Upon examination it was found that the bulkhead forward of the lazarette, the door thereof and considerable dunnage, were burned.

November 21st: A lighter alongside of the ship, loaded with 272 drums of creosote, was capsized during a heavy gale and the drums precipitated into about 6 fathoms of water.

A survey was called and recommendations were made to ascertain the number of damaged drums, the loss in weight of oil and the recovery of the 272 drums lost from the lighter. These recommendations were carried out with the following results: 741 drums were found damaged and worthless; 56,267.2 gallons of oil were found to have been lost from these drums and all but 4 drums of the lighter load of 272 were recovered. The adjusters are advised that there is no ordinary loss in measurement of creosote in iron drums and that the 741 drums dam-

aged, for which claim is made, were all on board at the time of the fire.

EXTACT from PROTEST.

1908.

May 30th: This vessel sailed from London with a cargo of creosote in iron drums, bound for Eagle Harbor.

Nothing to be noted here occurred until

June 6th: When it was discovered that the carpenter's sounding rod was very slightly colored with creosote.

July 11th: The crew were employed placing extra checks amongst the cargo. [9]

July 15th: The moderate breeze that had been experienced freshened and the light sails were stowed away.

July 16th: A heavy squall struck the vessel and carried away the after leech of the inner jib. The upper and middle spanker brails were carried away while the sail was being taken in. New spanker brails were rove in.

July 18th: A strong breeze accompanied by a moderate sea and occasional heavy squalls, was encountered. Later in the day the ship rolled heavily in a high southwesterly swell.

July 20th: A heavy southwesterly swell was encountered in which the ship rolled severely. There was no wind at the time and the vessel would not steer.

July 28th: The strong breeze increased to a gale accompanied by a high sea in which the ship pitched heavily and shipped occasional heavy

seas on deck. Heavy seas smashed the starboard side light. Later the wind increased to a fresh gale accompanied by hard squalls of hail and rain. The ship pitched and rolled heavily.

July 29th: The gale continued as before; likewise the sea. The vessel again rolled heavily and pitched badly. Later the squalls blew with hurricane force. The ship rolled and pitched badly in a high confused sea and much water was shipped on deck. Towards night it was discovered that the cargo in the hold had commenced to work. The crew entered the hold from the lazarette and secured it as well as possible.

July 30th: The gale still continued. The ship rolled and pitched heavily and took much water on deck fore and aft. The cargo worked as before and the crew again entered the hold to secure it.

July 31st: The gale moderated the first part of the day but increased again later. Much water was shipped on deck. The cargo worked as before and the crew entered the hold through the ventilator hatch and secured it as well as possible.

August 1st: A fresh gale was experienced and the ship rolled and pitched heavily in a high beam sea. Again the cargo worked.

August 2nd: The wind constantly shifted in light squalls and the ship was frequently caught aback. No. 1 foot rope carried away and the main topgallant sail was sent down and No. 2 topgallant sail was bent.

August 4th: A high westerly swell was experienced in which the vessel rolled and pitched. An old

spanker boom was cut and used to chock off the cargo. This date the weather moderated and from this date until

August 7th: The crew were employed securing cargo.

August 9th: A moderate gale was encountered, accompanied by a high sea. The vessel rolled and pitched heavily.

August 11th: A strong gale was experienced, accompanied by hard squalls. Large quantities of water were shipped over all. [10]

August 12th: Similar conditions were encountered. The vessel continued to roll, labor and strain and ship large quantities of water on deck.

August 13th: The gale continued and was accompanied by a high confused sea.

August 18th: The barometer fell rapidly.

August 19th: Another gale was encountered accompanied by a high confused sea. The vessel labored and pitched heavily. The main topmast staysail burst while set.

August 25th: A hard gale was encountered accompanied by a heavy sea. Much water was shipped on deck. The cargo worked again badly.

August 26th: Similar conditions were experienced.

August 27th: A moderate gale was experienced in which the vessel rolled heavily. Again the barometer fell rapidly.

August 28th: The gale continued. The vessel rolled and strained.

August 30th: A high sea was experienced in which

the vessel labored heavily. The decks were constantly awash.

August 31st: A moderate gale was experienced. The decks were frequently awash and the cabin and deck houses were flooded. The cargo worked heavily.

September 1st: A moderate gale with hard squalls was experienced. The vessel shipped large quantities of water over all. The cargo worked heavily.

September 2nd: Similar conditions were encountered.

September 4th: A strong gale was experienced accompanied by a high sea in which the vessel labored and strained badly. The cargo worked as before. The hold was entered through the main ventilator and the drums were found to be adrift and were rolling about in all directions. It was impossible to secure the cargo until the weather moderated.

September 7th: A heavy sea struck the vessel and smashed the lighthouse on the starboard side.

September 14th: The crew were employed cutting up spare spars and blocking off the cargo with them.

September 26th: It was noticed by the soundings in the pump well that there was an increase of liquid which appeared to be mostly creosote.

October 12th: The foot rope of the foretopgallant sail carried away.

November 2nd: A strong gale accompanied by a high sea was encountered. The ship labored heavily



and shipped much water on deck.

November 3rd: Similar conditions were encountered and the cargo again worked badly. [11]

November 6th: The ship was taken in tow by the tug "Wyadda."

November 9th: She arrived at Eagle Harbor.

November 17th: Stevedores commenced to discharge the cargo and they discharged 136 drums.

November 18th: Stevedores continued to discharge the cargo and at 5:00 P. M. finished for the day. 291 further drums were discharged. About 9:30 P. M. smoke was discovered issuing from the after hatch, by one of the crew who immediately notified the master and then gave the alarm. This alarm was responded to by the crews of the ship "Jupiter," the SS. "Hornelen," and the employees of the Pacific Creosoting Company who brought with them several chemical fire extinguishers. The master went below through the lazarette and saw the reflection of the fire over the top of the bulkhead between the after 'tween-decks and the lazarette. The after 'tween-decks were still full of cargo. After considerable trouble the fire was extinguished and it was then discovered that the aforesaid bulkhead, together with the door thereof (the bulkhead was built in the vessel) and the dunnage in the after 'tween-decks were burned, and some of the ship's stores in the lazarette were damaged by water and chemicals. The origin of the fire was not discovered.

AFFIDAVIT RE CAPSIZING OF LIGHTER.

State of Washington,  
City of Seattle,—ss.

Frank D. Beal, being duly sworn, deposes and says:

That he is superintendent of the Pacific Creosoting Company's plant at Eagle Harbor; that on November 21, 1908, Pacific Barge Company's Scow #2 was lying moored to the British Bark "Sardhana," in the harbor opposite to the plant, and that there were Two Hundred and Seventy Two drums of creosote oil (272) upon this scow which had been discharged during the day.

That during the night of the 21st and 22nd a heavy gale sprang up, during which time the scow filled with water and capsized, precipitating all the drums into about six fathoms of water.

That fifteen of these drums were later recovered being evidently but partly filled with oil, and that the balance of the load, Two Hundred and Fifty-seven (257) filled drums are now lying on the bottom of the harbor alongside the "Sardhana."

(Signed) F. D. BEAL,

Subscribed and sworn to before me this second day of December, A. D. 1908.

(Signed) H. E. STEVENS,  
Notary Public in and for the State of Washington,  
Residing at Seattle, Wash.

REPORT OF SURVEY.

On Barge P. B. No. 2 of Seattle, Washington.

At the request of the Pacific Creosoting Company,

I, the undersigned did hold survey upon the above described barge, November 23rd, 1908, and subsequent dates, for the purpose of ascertaining the cause of the capsizing of same, and the damage resulting to 272 drums of creosote oil, which formed the cargo of [12] said barge at the time of the accident.

By report obtained from the manager of the Creosoting Works and from officers of the Bark "Sardhana" it appears that the barge P. B. #2 was placed alongside the above named vessel, which vessel was moored in a sheltered part of Eagle Harbor, Wash., to receive a cargo of drums of creosote oil for transportation to the works, and that on the evening of November 21st, when the work was finished for the day 272 drums had been loaded on to said barge; and as is customary the barge left safely moored alongside the Bark to complete loading the next day, but during the night an unexpected gale sprang up, and before a tug could be obtained to move the barge, she collided heavily with the Bark which contact shifted the drums to one side, and caused the barge to capsize, thus spilling the whole of the 272 drums into the bay and leaving the barge bottom up.

#### RECOMMENDATIONS.

I recommended that bids be obtained from the local divers and a contract let for the recovery of the drums which recommendation was carried into effect with the following results:

253 drums recovered by divers.

15 light drums that floated, recovered by the launch and crew — of the Pacific Creosoting Company.

268 Forward.

4 lost entirely, could not be located.

272 total number of drums that were on board the barge.

I further recommended that the barge be towed to some safe place, righted and put on the gridiron for examination.

This recommendation was carried out, and upon making a careful examination of said barge I found her to be undamaged, and making no water.

In my opinion the cause of the accident was entirely due to the part cargo of drums shifting on the deck of the barge, the harbor in which the ship and barge were moored is considered perfectly safe and protected from wind, but on this occasion an exceptionally heavy ground swell swept in.

Respectfully submitted

(Signed) F. WALKER,

Marine Surveyor.

Seattle, Washington, November 23rd to December 12th, 1908.

#### REPORT OF SURVEY.

On Cargo of Creosote Oil ex British Bark "Sardhana."

At the request of the Pacific Creosoting Company, I, the undersigned, did hold survey upon the above described cargo, previous to its removal from the vessel, on the 17th of November, 1908, and on subsequent dates, as same was being discharged, for the purpose of ascertaining the extent of damage alleged to have been sustained during the voyage from London, England, to Eagle Harbor, Wash.

By abstracts obtained from the vessel's log, it appears that she sailed from London on May 30th, 1908; that nothing worthy of note occurred until June 6th when it was noticed by the carpenter in taking soundings that traces of creosote appeared on the sounding rod. Various weather was encountered and on July 29th during a heavy gale and towards night it was discovered that the cargo had commenced to work. The crew entered the hold and [13] secured it as much as possible. July 30th, 31st and August 1st gale continued as before and cargo again worked. Crew did their best to secure same. From August 4th to August 7th the crew were employed securing cargo. From this date to August 25th various weather was encountered, and from the latter date to November 3rd a series of more or less severe gales were encountered, the cargo working more or less and an increase of liquid, which appeared to be creosote, was noticed at time of sounding the pump well. On November 6th the ship was taken in tow by the tug "Wyadda," and on November 9th she arrived at Eagle Harbor. November 17th commenced to discharge cargo, and on this date discharged 136 drums. On November 18th continued to discharge, and at 5 P. M. finished for the day, at which time 291 further drums were discharged. At about 9:30 P. M. smoke was discovered issuing from the after hatch by one of the crew who at once gave the alarm which was responded to by the crews of the ship "Jupiter," the SS. "Hornelen," and the employees of the Pacific Creosoting Company, who brought with them several chemical fire extinguishers. The master went below

through the lazarette and located the fire at the bulk-head separating the after 'tween-deck from the lazarette. The after 'tween-decks were still full of cargo, but after considerable trouble the fire was extinguished, and it was then discovered that the wooden bulkhead and door to same, together with a quantity of dunnage in the after 'tween-decks were burned, and some of the ship's stores in the lazarette were damaged by water and chemicals. The origin of the fire was not discovered. For further particulars of the voyage, see ship's log and protest.

Upon making a careful examination of the cargo on November 17th, previous to commencing discharge, and at various dates during the discharge of same, I found the drums to be well stowed and dunnaged.

The cargo consisted of 2,753 drums of creosote, of which 2,012 drums were discharged in good condition, the remaining 741 drums were more or less dented, damaged, and in a leaky condition, 25 being entirely empty.

2,012	Drums full and in good order
716	“ damaged and partly empty
25	“ damaged and entirely empty

---

2,753 total.

After vessel was discharged the officials of the Creosoting Company emptied the 741 damaged drums and measured the amount obtained from same, which proved to be 23,650 galls., and as these drums when full contained 109  $\frac{2}{10}$  galls. each, which equals 80,917.2 galls., the loss is shown as follows:

80,917.2 galls. when shipped

23,650 “ discharged

---

56,267.2 “ total loss

The 741 damaged drums are entirely unfit for further use and have no salable value.

The loss of 56,267.2 galls. of creosote does not include the 4 drums lost by the capsizing of barge P. B. No. 2 on the night of November 21st, and reported on in separate report. These, however, are included in the 2,012 drums discharged in good condition.

Respectfully submitted,

(Signed) F. WALKER,

Marine Surveyor.

Seattle, Wash., November 17th—December 28th, 1908.

ADJUSTERS' NOTE:

United States gallons=46889-1/3 Imperial Galls. [14]

	Mark. B	D	Mark. C	
	ENG.	Contents.	ENG.	Contents.
	Drums.		Drums.	
Bare invoice cost at Works.	£309-3-9	£206-9-8	£2786-6-5	£2507-13-9
Cost of filling drums.....		12-1-0		118-14-11
Cost of putting on board and advanced freight....	25-8-11	111-13-0	133-9-9	572-17-7
Insurance premium .....	15-2-5	14-18-4	130-17-11	143-8-6
Cost of Consular Invoice..	2-7	2-7	2-7	2-7
Total invoice cost and ad- vanced freight .....	£349-17-8	£345-4-7	£3050-16-8	£3342-17-4

24 *Thames & Mersey Marine Ins. Co., Ltd.,*

Or. Mark.	Merchandise Shipped.	Invoice Value & Advanced Frt.	Insured Value.	Insured Value of Each Drum & Gal.
B D				
O	255 Drums	£ 349-17-8	£ 367-14-3	£1-8-10
ENG.	23142 Gals. Creosote	£ 345- 4-7	£ 362-16-5	£0-0-3.763
C	2498 Drums	£3050-16-8	£3206- 5-7	£1-5-8
ENG.	227992 Gals. Creosote	£3342-17-4	£3513- 3-9	£0-0-3.698
		<u>£7088-16-3</u>	<u>£7450- 0-0</u>	

SHIPMENT & OUT-TURN.

Mark.	Shipped.	Delivered.	Short.
B D Drums	255 pkgs.	247 pkgs.	8 pkgs.
O			
ENG. Creosote	23142 Gals.	22635.78 gals.	506.22 gals.

Note: If 741 drums lost 46889-1/3 gallons, then 8 drums lost in proportion 506.22 gallons. No record was secured of the contents short on each mark.

C Drums.	2498 Pkgs.	1761 Pkgs.	737 Pkgs.
Eng. Creosote	227992 gals.	181243.81 gals.	46748.19 gals.
Imperial gallons.			

INSURED WITH THE CLAUSES:

“Warranted free from Particular Average, unless the vessel or craft or the interest insured be stranded, sunk, or on fire, or in collision with ice or any substance other than water (floating or non-floating), the collision to be of such a nature as may reasonably be supposed to have caused or led to damage of cargo, or vessel put into a port of refuge or distress and discharge part or whole cargo, each craft or lighter to be deemed a separate insurance, but to pay warehousing, forwarding and special charges, if incurred, as well as partial loss arising from transshipment. [15]

“Including all risks of transshipment and of craft, lighterage and/or any other conveyances, from the warehouse until on board the vessel, and from the vessel until safely delivered into warehouse, or destination in the interior, or of fire while waiting shipment.

8 Drums of the Mark B. D.	at £1-8-10	per drum	£ 11-10-8
506.22 Gals.	“ “ “ B. D.	“ £0-0-3.763	per gal. £ 7-18-9
737 Drums	“ “ “ C.	“ £1-5- 8	per drum £ 945-16-4
46748.19 Gals.	“ “ “ C.	“ £0-0-3.698	per gal. £ 720- 6-3
			<u>£1685-12-0</u>



SUE & LABOR CHARGES:

Henry Finch,

For professional services in raising creosote tanks at Eagle Harbor, Wash. as per memo. agreement dated Dec. 1st., 1908, 253 Drums raised at \$4. each ..... \$1012.00

J. N. Bogart,

To 4½ days with driver hoisting submerged drums from Harbor bottom... 45.00

Pacific Creosoting Company,

To launch 2 hours at \$2.50, and one man at 25¢, towing scows from diving outfit to gridirons and return..... \$5.50

To launch 5 hours at \$2.50 and 3 men at 25¢ each, picking up drums adrift in Harbor ..... 16.25

To launch 5 hours at \$2.50 and 2 men 5 hours each at 25¢ picking up drums in Harbor as above..... 15.00 36.75

Pacific Creosoting Company,

Blacksmith 3 hrs. fixing hoisting gear, 3 laborers 3 days each handling drums on scow ..... 19.20

Rent of launch and man tending scow and driver while recovering sunken drums, 4-½ days \$10..... 45.00 64.20

\$1157.95 £1685-12-0

26 *Thames & Mersey Marine Ins. Co., Ltd.,*

Forward .....	\$1157.95	£1685-12-0
Crosby Tow Boat Co.,		
To towing scow from Seattle to Eagle Harbor .....	\$10.00	
To rent of scow 5 days at \$10. per day .....	50.00	60.00
	<hr/>	
Frank Walker,		
To survey report on cargo of Br. B'k. "Sardhana" dated November 17th—December 28th, 1908 .....		75.00
Frank Walker,		
To survey and report on scow P. B. No. 2 dated November 23rd to December 12th, together with consultations at various dates.....		25.00
For extended protest .....		25.00
For professional services and advice including consultations with consignees and surveyor, and for this statement .....		35.00
	<hr/>	<hr/>
	\$1377.95	£1685-12-0
\$1377.95 at Exchange \$4.86.....		283-10-7
		<hr/>
		£1969- 2-7

VALUATION IN POLICIES £7450.

Thames & Mersey Marine Insurance Co. Ltd.,	£ 932.	pays	£ 246- 6-9
Underwriters at Lloyds	£1291	"	£ 341- 4-7
Underwriters at Lloyds	£5227	"	£1381-11-3
	<hr/>		<hr/>
Seattle, Washington, May 18th, 1909.	£7450.		£1969- 2-7

Per pro. JOHNSON & HIGGINS,  
 GERRARD CREWE,  
 Atty.,  
 Average Adjusters.

[Indorsed]: Libel. Filed in the U. S. District Court, Western Dist. of Washington. Aug. 10, 1910.  
 R. M. Hopkins, Clerk. [17]

[Title of Court and Cause.]

**Answer of Respondent.**

Comes now the Thames & Mersey Marine Insurance Company, Ltd., respondent herein, and for answer to the libel of the Pacific Creosoting Company on file herein alleges:

I.

That it admits the allegations contained in paragraph I of said libel.

II.

That it admits the allegations contained in paragraph II of said libel except that it does not admit that Exhibit "A" is a true copy of the policy of insurance mentioned in said paragraph, in that said policy as executed contained various interlineations and erasures and clauses in different types which, respondent alleges, are material in enabling the Court to construe such policy, and it, therefore, prays for the production of the original policy of insurance upon the trial of this cause. Subject to these limitations, however, it admits the verity of said Exhibit "A." [18]

III.

Answering the allegations contained in paragraph III of said libel, respondent is ignorant as to the matters and things therein contained and can, therefore, neither admit nor deny the same, and on this ground it calls for proof thereof.

IV.

Answering the allegations contained in paragraph IV of said libel respondent denies that the damage

to said cargo, or the expenses incurred by libelant in salving the same, were such as were contemplated in or insured by the policy aforesaid. It is ignorant as to the remaining matters and things in said paragraph contained and can, therefore, neither admit nor deny the same, and on this ground it calls for proof thereof.

## V.

Answering the allegations contained in paragraph V of said libel respondent denies that under the average adjustment therein mentioned, or otherwise or at all, it is liable to pay the libelant the sum of \$1,197.20, or any sum whatever. It also denies that the adjustment therein mentioned was a general average adjustment. It is ignorant as to the allegation that the adjustment therein alleged was made, and as to whether Exhibit "B" attached to said libel is a true copy of said adjustment and can, therefore, neither admit nor deny the same, on which ground it calls for proof thereof.

## VI.

Answering the allegations contained in paragraph VI of said libel respondent denies that the sum of \$1,197.20, or any sum, is due from it to the libelant, and denies that all and singular the premises are true. Otherwise it admits the allegations of said paragraph VI. [19]

## VII.

And as a further and separate defense to said libel respondent alleges:

That by the terms of the aforesaid policy of insurance, the same was warranted free from particular

average, subject to certain exceptions, that libelant's loss, if such loss there was, was a particular average loss, and that the same was not within any of the aforesaid exceptions.

### VIII.

And as a further and separate defense to said libel respondent alleges:

That the aforesaid policy of insurance was a policy made and entered into in the city of London, in the Kingdom of Great Britain, and was and is governed by the law of that Kingdom; that under the law of said Kingdom a ship must be "on fire" as a whole, in order to delete the F. P. A. (free from particular average) warranty in policies like that now sued on under the "on fire" clause therein contained; that the British bark "Sardhana" was not on November 18th, 1908, or at any other time, on fire as a whole, and hence was not "on fire" under the terms of the policy in suit, and that hence respondent is not liable under the terms of said policy for the particular average losses alleged to have been suffered by the libelant.

### IX.

And as a further and separate defense to said libel respondent alleges:

That the aforesaid policy of insurance was a policy made and entered into in the city of London, in the Kingdom of Great Britain, and was and is governed by the law of that Kingdom; that under the law of said Kingdom, the British bark "Sardhana" was not on November 18th, 1908, or at any other time, [20] "on fire" under the terms of the policy in suit, and hence respondent is not liable under the terms of said

policy for the particular average losses alleged to have been suffered by the libellant.

WHEREFORE, respondent prays that said libel may be dismissed with costs.

BRADY & RUMMENS,  
Proctors for Respondent.  
McCLANAHAN & DERBY,  
Of Counsel.

State of California,  
City and County of San Francisco,—ss.

Louis Rosenthal, being first duly sworn, on oath deposes and says: That he is the Pacific Coast Agent of the Thames & Mersey Marine Insurance Company, Ltd., respondent herein, and has general charge of its business on all parts of the Pacific Coast.

That he has read the foregoing answer and knows the contents thereof and that the same is true to the best of his knowledge, information and belief. That he makes this verification upon the information received from his agents in Seattle, Washington, and from the home offices of the respondent in London, England, and that he makes the same on behalf of said respondent having due authority so to do.

LOUIS ROSENTHAL.

Subscribed and sworn to before me this 25th day of January, 1911.

[Seal] M. V. KIRKETERP,  
Notary Public in and for the City and County of San  
Francisco, State of California. [21]

**Interrogatories Propounded to Libelant by Answer.**

The respondent, in pursuance of Admiralty Rule 32 in such cases made and provided, propounds the following interrogatories to the libelant herein:

1. Please state what "the other parts of the ship," alleged to have been burned in paragraph III of the libel, were.

2. Was the whole of "the bulkhead forward of the lazarette," referred to in said paragraph, burned, and, if not, state how much of it was burned?

3. Was the whole of the door of said bulkhead burned, and, if not, state how much of it was burned?

4. How much dunnage referred to in said paragraph III was burned?

5. Was there a survey for fire damage on said ship held because of the fire referred to in said paragraph III, and, if so, please state when it was made, by whom, and attach a copy of the report of survey?

6. Was the damage caused by said fire such as to require any repairs, and, if so, state what they were, who made the repairs, and the cost thereof?

7. State in detail what "outside assistance" was procured to extinguish the fire referred to in said paragraph III.

8. State in detail the difficulties encountered in extinguishing the fire referred to in said paragraph III.

9. State the names and addresses of the men who extinguished the said fire so far as known to you.

BRADY & RUMMENS,  
Proctors for Respondent.  
McCLANAHAN & DERBY,  
Of Counsel. [22]

Due and full service of within Answer and Interrogatories acknowledged this 30th day of Jan., 1911.

BOGLE, MERRITT & BOGLE,

Proctors for Libelant.

[Indorsed]: Answer of Respondent and Interrogatories. Filed in the U. S. District Court, Western Dist. of Washington. Jan. 31, 1911. R. M. Hopkins, Clerk. [23]

---

[Title of Court and Cause.]

**Answers of Pacific Creosoting Company, a Corporation, to the Interrogatories Propounded to It in This Cause.**

1. To the first interrogatory libelant says: That the "other parts of the ship" which were burned, as alleged in paragraph III of the libel, were the floors and ceiling of said ship near said bulkhead.

2. To the second interrogatory libelant says: That about two-thirds of the said bulkhead was burned and charred.

3. To the fifth interrogatory libelant says: That no survey for such fire damage was held to its knowledge.

4. To the sixth interrogatory libelant says: That the damage caused by said fire to the said ship, was such as to require repairs; that such repairs consisted of removing the burned bulkhead and building a new one in its place. These repairs were made by the ship's carpenter. Libelant is unable to state the cost of such repairs.

5. To the seventh interrogatory libelant says:



That the "outside assistance" which was procured to extinguish the fire was [24] a portion of the crew of the steamer "Hornelon," and also certain employees of the libelant working at its plant at Eagle Harbor.

6. To the eighth interrogatory libelant says: That the difficulties encountered in extinguishing the fire were that stores were piled on one side of the bulkhead, and drums of creosote, dunnage, etc., on the other, and that the lumber was saturated with creosote, making the same very inflammable, and that it required hard work on the part of the crew of the "Sardhana" and the persons so assisting them to extinguish the fire.

PACIFIC CREOSOTING CO.,

By its H. E. STEVENS,

Secy.

BOGLE, MERRITT & BOGLE,

Proctors for Libelant. [25]

United States of America,  
Western District of Washington,—ss.

H. E. Stevens, being first duly sworn, on oath, says: That he is the secretary of the Pacific Creosoting Company, a corporation, libelant herein, and makes this verification of the foregoing Answers to the interrogatories in behalf of said libelant; that he has read the foregoing answers to interrogatories, and the same are true.

H. E. STEVENS,

Secy.

Subscribed and sworn to before me this 15th day of May, A. D. 1911.

[Notarial Seal] F. T. MERRITT,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

Service of within Answers to Interrogatories this 15th day of May, 1911, and receipt of a copy thereof, admitted.

BRADY & RUMMENS,  
Proctors for Respondent.

[Indorsed]: Answers of Libelant to the Interrogatories Propounded by Respondent. Filed in the U. S. District Court, Western Dist. of Washington. May 16, 1911. R. M. Hopkins, Clerk. [26]

---

[Title of Court and Cause.]

**Amended Answer of Libelant to the Fifth Interrogatory Propounded to It in This Cause.**

For its Amended Answer to the fifth interrogatory propounded to libelant in this cause, it says: A survey for said fire damage on said ship was held because of the fire referred to in Paragraph 3 of the libel herein; such survey was made November 20, 1908, by one Frank Walker, a marine surveyor of Seattle, State of Washington.

PACIFIC CREOSOTING COMPANY.

By H. E. STEVENS,

Its Secretary.

BOGLE, MERRITT & BOGLE,

Proctors for Libelant. [27]

United States of America,  
Western District of Washington,—ss.

H. E. Stevens, being first duly sworn on oath, deposes and says: That he is the secretary of the Pacific Creosoting Company, a corporation, libelant herein, and makes this verification of the foregoing Amended Answer to the fifth interrogatory in behalf of said libelant; that he has read the foregoing Amended Answer to said fifth interrogatory, and the same is true; affiant further says that this Amended Answer to said fifth interrogatory is made for the reason that at the time of making the original answer to said interrogatory, he did not know and had never been informed that any such survey had been made, but that on this 26th day of May, 1911, affiant was informed by said Frank Walker that he had made such survey at the time above stated, which was the first knowledge or information affiant had of said fact, and as he verily believes, is the first that any officer of said corporation knew of such survey.

H. E. STEVENS.

Subscribed and sworn to before me this 26th day of May, A. D. 1911.

[Notarial Seal]

F. T. MERRITT,

Notary Public in and for the State of Washington,  
Residing at Seattle. [28]

Service of within Amended Answer to interrogatory this 26th day of May, 1911, and receipt of a copy thereof, admitted.

BRADY & RUMMENS,  
Proctors for Respondent.

[Indorsed]: Amended Answer of Libelant to the Fifth Interrogatory Propounded to It in this Cause. Filed in the U. S. District Court, Western Dist. of Washington. May 26, 1911. R. M. Hopkins, Clerk.  
[29]

---

[Title of Court and Cause.]

**Exceptions to Libel.**

Comes now the Thames & Mersey Marine Insurance Company, Ltd., respondent herein, and excepts to the libel of the Pacific Creosoting Company, libelant herein, upon the following grounds:

1. In that it appears from said libel that the loss and damage for which recovery is sought constitute a particular average loss, and it does not sufficiently appear from the facts alleged in said libel that the loss and damage was covered by the policy of insurance annexed to said libel and marked Exhibit "A."

2. In that it does not sufficiently appear from said libel what part, if any, of said loss and damage was covered by the terms of said policy.

3. In that the insurance affected by said policy is warranted free from particular average, subject to certain exceptions, and that it does not sufficiently appear from said libel that the cause of action is within said exceptions. [30]

WHEREFORE, respondent prays that said libel may be dismissed with costs.

Dated October —, 1910.

BRADY & RUMMENS,  
Proctors for Respondent.

Due and full service of within Exceptions to Libel acknowledged this 22d day of Oct., 1910.

BOGLE, MERRITT & BOGLE,  
Attorneys for Libelant.

[Indorsed]: Exceptions to Libel. Filed in the U. S. District Court, Western Dist. of Washington. Oct. 22, 1910. R. M. Hopkins, Clerk. [31]

---

[Title of Court and Cause.]

**Exceptions to Interrogatories [Addressed to Libelant].**

EXCEPTIONS TO THE INTERROGATORIES  
ADDRESSED TO THE LIBELLANT BY  
THE RESPONDENT HEREIN.

I.

The said libellant hereby excepts to the first interrogatory for the reason that said interrogatory does not call for evidence in support of respondent's defense, but calls for libellant's evidence in support of its libel herein; and said interrogatory is an attempt on the part of respondent to find out in advance what libellant's evidence will be.

II.

The libellant hereby excepts to the second interrogatory for the reason that said interrogatory does not call for evidence in support of respondent's defense, but calls for libellant's evidence in support of its libel herein; and the same is an attempt on the part of respondent to find out in advance what libellant's evidence will be.

## III.

The libellant hereby excepts to the third interrogatory for the reason that said interrogatory does not call for evidence in support of respondent's defense, but calls for libellant's evidence [32] in support of its libel herein; and the same is an attempt on the part of respondent to find out in advance what libellant's evidence will be.

## IV.

The libellant hereby excepts to the fourth interrogatory for the reason that said interrogatory does not call for evidence in support of respondent's defense, but calls for libellant's evidence in support of its libel herein; and the same is an attempt on the part of the respondent to find out in advance what libellant's evidence will be. And also upon the further ground that it is irrelevant and immaterial as to how much dunnage was burned.

## V.

The said libellant hereby excepts to the fifth interrogatory for the reason that said interrogatory does not call for evidence in support of respondent's defense, but calls for libellant's evidence in support of its libel herein, and also upon the further ground that the said interrogatory calls for the names of libellant's witnesses herein and for a copy of documents not in issue and which under the rules of this court libellant cannot be required to produce in answer to interrogatories, and upon the further ground that the said interrogatory is an attempt on the part of respondent to find out in advance what libellant's evidence will be.

VI.

The said libellant excepts to the sixth interrogatory for the reason that the same does not call for evidence in support of respondent's defense, but calls for the names of libellant's witnesses and evidence in support of the libel herein, and is an attempt on the part of respondent to find out in advance what libellant's evidence will be.

VII.

Libellant excepts to the seventh interrogatory for the reason [33] that the same does not call for evidence in support of respondent's defense, but calls for the names of libellant's witnesses and the evidence in support of its libel herein, and is an attempt on the part of respondent to find out in advance what libellant's evidence will be and who its witnesses will be.

VIII.

Libellant excepts to the eighth interrogatory for the reason that the same does not call for evidence in support of respondent's defense, but calls for libellant's evidence in support of its libel herein and is an attempt on the part of respondent to find out in advance what libellant's evidence will be.

IX.

Libellant excepts to the ninth interrogatory for the reason that the same calls for the names and addresses of libellant's witnesses, and is an attempt on the part of respondent to find out in advance the names of libellant's witnesses and what its evidence will be.

In all of which particulars the libellant insists

that the said interrogatories are improper to be propounded to the libellant herein and that the libellant should not be required to answer either of said interrogatories, and that each and all thereof should be stricken out.

**BOGLE, MERRITT & BOGLE,**

Proctors for Libellant.

Service of within exceptions this 15th day of Feby., 1911, and receipt of a copy thereof, admitted.

**BRADY & RUMMENS,**

Proctors for Respondent.

[Indorsed]: Exceptions to Interrogatories. Filed in the U. S. District Court, Western Dist. of Washington. Feb. 16, 1911. R. M. Hopkins, Clerk.

[34]

---

[Title of Court and Cause.]

**Exceptions to Answer.**

I.

The libellant excepts to the further and separate defense set forth in Article 7 of respondent's answer herein, upon the grounds that the same does not allege facts sufficient to constitute a defense to the libel herein, but the same is a mere conclusion and is impertinent, the Court having already in this cause decided adversely to respondent's contention in said Article.

II.

The libellant excepts to the further and separate defense set forth in Article 8 of respondent's answer herein, upon the grounds that the same does



not allege facts sufficient to constitute a defense to the libel herein, but the same is a mere conclusion and is impertinent, the Court having already in this cause decided adversely to respondent's contention in said Article.

III.

The libellant excepts to the further and separate defense set forth in Article 9 of respondent's answer herein, upon the grounds that the same does not allege facts sufficient to constitute a defense to the libel herein, but the same is a mere conclusion and is impertinent, the Court having already in this cause decided [35] adversely to respondent's contention in said Article.

In which particulars the libellant insists that the respondent's said answer is irrelevant, insufficient, imperfect and impertinent;

WHEREFORE, the libellant excepts to and prays that the said allegations of said answer excepted to as aforesaid may be expunged with costs.

BOGLE, MERRITT & BOGLE,

Proctors for Libellant.

Service of within Exceptions this 15th day of Feby., 1911, and receipt of a copy thereof, admitted.

BRADY & RUMMENS,

Proctors for Respondent.

[Indorsed]: Exceptions to Answer. Filed in the U. S. District Court, Western Dist. of Washington. Feb. 16, 1911. R. M. Hopkins, Clerk. [36]

[Title of Court and Cause.]

**Order on Exceptions to Answer and to Interrogatories.**

The above-entitled matter having been duly submitted to the Court upon the exceptions of the said libellant to paragraphs 7, 8 and 9 of the answer of respondent herein, and upon the exceptions of said libellant to the interrogatories heretofore propounded and filed by the said respondent, and the Court having duly considered the said exceptions, and having heretofore filed its memorandum decision upon the said exceptions,

NOW, THEREFORE, in accordance with said memorandum decision, IT IS HEREBY ORDERED that the said exceptions of said libellant to paragraphs 7 and 9 of the said answer be and the same are hereby sustained, and that the said exceptions to paragraph 8 of said answer be and the same are hereby overruled.

IT IS FURTHER HEREBY ORDERED, ADJUDGED and DECREED that the said exceptions to interrogatories numbers 3, 4 and 9 propounded by said respondent be and the same are hereby sustained, and that the said exceptions to interrogatory number 5, in so far as the same calls for the production of a copy of the report of any survey which may have been made, be and the same is hereby sustained, but otherwise said exceptions are overruled as to said Interrogatory 5. [37]

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the said exceptions to interroga-

tories, 1, 2, 6, 7 and 8 be and the same are hereby overruled.

The said libellant excepts to that portion of the foregoing order overruling its said exceptions, and the said respondent hereby excepts to that portion of the foregoing order sustaining the said exceptions, which exceptions of the respective parties are hereby allowed.

DONE in open court this 29th day of April, 1911.

GEORGE DONWORTH,

Judge.

O. K. as to form.

BRADY & RUMMENS.

NOTE: The above order was signed in order to carry out Memorandum Decision filed by Judge Hanford.

GEORGE DONWORTH,

Judge.

[Indorsed]: Order on Exceptions to Answer and to Interrogatories. Filed in the U. S. District Court, Western Dist. of Washington. Apr. 29, 1911. R. M. Hopkins, Clerk. [38]

---

[Title of Court and Cause.]

**Order to Transmit Original Exhibits.**

Now, on this 5th day of August, 1914, upon motion of Messrs. Brady & Rummens, Edmund B. McClanahan and S. Hasket Derby, proctors for respondent and appellant, and for sufficient cause appearing, it is ordered that the Libellant's Exhibits "A," "B," "C," "D," "E," "E1," "E2,"

44 *Thames & Mersey Marine Ins. Co., Ltd.*,

“E3,” “F,” “G,” “H,” “I,” “J,” “K,” “L,” and  
“M,” and Respondent’s Exhibits 1, 2 and 3, filed  
and introduced as evidence upon the trial of this  
cause, be by the Clerk of this Court forwarded  
to the United States Circuit Court of Appeals for  
the Ninth Judicial Circuit, there to be inspected  
and considered together with the transcript of the  
record on appeal in this cause.

JEREMIAH NETERER,

District Judge.

[Indorsed]: Order to Transmit Original Exhibits.  
Filed in the U. S. District Court, Western Dist of  
Washington. August 5, 1914. Frank L. Crosby,  
Clerk. Ed M. Lakin, Deputy. [39]

---

[Title of Court and Cause.]

**Direct Interrogatories to be Propounded to M. I.  
Helman.**

Direct interrogatories to be propounded to M. I.  
Helman, at Wenatchee, Washington, a witness to  
be produced, sworn and examined in a certain cause  
of admiralty and maritime jurisdiction now pend-  
ing in the District Court of the United States, for  
the Western District of Washington, Northern  
Division, wherein Pacific Creosoting Company, a  
corporation, is libelant, against the Thames and  
Mersey Marine Insurance Company, Ltd., respond-  
ent, on behalf of said libelant, in accordance with  
the stipulation hereto annexed:

Direct Interrogatory No. 1:

State your name, age, residence and occupation.

Direct Interrogatory No. 2:

What was your occupation in the month of November, 1908?

Direct Interrogatory No. 3:

If your answer to Interrogatory No. 2 is that you were the chief engineer at the plant of the Pacific Creosoting Company, a corporation, libellant herein, state how long you had been in the employ of the Pacific Creosoting Company, and how long you remained in their employ after November, 1908.

[40]

Direct Interrogatory No. 4:

State where you were on the evening of November 18, 1908, at about 9:30 o'clock.

Direct Interrogatory No. 5:

State whether or not the British bark "Sardhana" was anchored in Eagle Harbor on November 18, 1908, and if so, state where the said ship was anchored, and what she was engaged in doing on said date.

Direct Interrogatory No. 6:

Did you hear a fire-alarm sounded from the British bark "Sardhana" at about 9:30 o'clock on said November 18, 1908?

Direct Interrogatory No. 7:

If you answer Interrogatory No. 6 in the affirmative, state just where you were located when you heard said fire-alarm.

Direct Interrogatory No. 8:

If you answer Direct Interrogatory No. 6 in the affirmative, state, as near as you can, the distance from the place where you were located at the time

you heard the said fire-alarm to the place where the said Bark was anchored on said night.

Direct Interrogatory No. 9:

If you answer Interrogatory No. 6 in the affirmative, state just what you did after hearing the said fire-alarm.

Direct Interrogatory No. 10:

State whether or not you went aboard the said bark on the evening of November 18, 1909, after hearing the said fire-alarm.

Direct Interrogatory No. 11:

If you answer Interrogatory No. 10 in the affirmative, state how you got aboard the bark, and the approximate time which elapsed from the time you heard the fire-alarm until you were aboard the said bark. [41]

Direct Interrogatory No. 12:

If in answer to Interrogatory No. 10 you state that you went aboard the said bark, state just what evidence there was of a fire aboard when you arrived, and also state what efforts were being made to extinguish the fire, the number of men engaged, and the means employed in said work.

Direct Interrogatory No. 13:

State, if you know, what portions of the ship were burned by said fire.

Direct Interrogatory No. 14:

State whether or not any outside assistance from other ships in Eagle Harbor was offered or used in extinguishing the said fire.

Direct Interrogatory No. 15:

If you answer the preceding interrogatory in the

affirmative, state what other ships offered assistance, and the approximate number of men from the crews of said ships who assisted in putting out the fire.

Direct Interrogatory No. 16:

If you answer Interrogatory No. 14 in the affirmative, state where the other ships were anchored with reference to the position of the "Sardhana."

BOGLE, GRAVES, MERRITT & BOGLE,  
Proctors for Libelant. [42]

---

[Cross-interrogatories to be Propounded to M. I. Helman.]

[Title of Court and Cause.]

Cross-interrogatories to be propounded to M. I. Helman, at Wenatchee, Washington, a witness to be produced, sworn and examined in a certain cause of admiralty and maritime jurisdiction now pending in the District Court of the United States, for the Western District of Washington, Northern Division, wherein Pacific Creosoting Company, a corporation, is libelant, against the Thames and Mersey Marine Insurance Company, Ltd., respondent, on behalf of said respondent, in accordance with the stipulation hereto annexed:

Cross-interrogatory No. 1: If in answer to direct interrogatory 13 you have stated that any part of the bark "Sardhana" was burned by said fire, please state when it was that you first saw such burned portions of said ship.

Cross-interrogatory No. 2: If in answer to direct interrogatory 13 you have stated that any part of said bark "Sardhana" was burned by fire, please give your present judgment of the area so burned, that is, if you have answered that the bulkhead was burned, state the width of the burned area and the height, and also if you have answered that the ceiling and floor was burned, state your judgment of the extent thereof in square feet. [43]

Cross-interrogatory No. 3: If in answer to direct interrogatory 13 you have stated that the bulkhead door was a part of said bark burned by said fire, please state if the entire door was burned or, if not, just how much was burned, and state in this connection whether the burning of the door was such as to destroy its use as such.

Cross-interrogatory No. 4: If in answer to direct interrogatory 13 you have named some portion of the bark known by you personally to have been burned by said fire, please state whether or not you have received from anyone connected with this case, or with this deposition, any word or statement apprising you of any matter or thing connected with or concerning the extent or area of the burning done by said fire, either to the floor, ceiling, bulkhead or bulkhead door of said bark.

Cross-interrogatory No. 5: Have you at any time learned by word of mouth or by writing of any kind that the bulkhead door of the "Sardhana"



is now in the city of Seattle? If so, please state all that you have so learned and, if the knowledge came to you through written communication, please attach same hereto as part of your deposition, or give your reason for an inability to do so.

Cross-interrogatory No. 6: If in answer to direct interrogatory 10 you have stated that you saw smoke coming from the cabin, please state whether you went below at any time during the progress of the fire or whether you remained on deck.

Cross-interrogatory No. 7: Is it true that there was a good deal of excitement on board the bark "Sardhana" at the time of the fire? [44]

Cross-interrogatory No. 8: If in answer to direct interrogatory 10 you have made statements with reference to the said fire, and the efforts made to extinguish the same, is it not a fact that your observations of the matters testified to were obtained while you were on the deck of the "Sardhana" and not while you were below?

Cross-interrogatory No. 9: If in answer to direct interrogatory 14 you have stated that outside assistance from other ships was offered or used, please state from your personal knowledge all that you saw done by such outside assistance in the actual extinguishment of said fire.

Cross-interrogatory No 10: If in answer to direct interrogatory 11 you have stated how you got

aboard the bark, please state who accompanied you at that time.

BRADY & RUMMENS,  
McCLANAHAN & DERBY,  
Proctors for Respondent. [45]

---

[Title of Court and Cause.]

**Answers of Witness M. I. Helman to Direct and Cross-interrogatories Hereto Attached.**

M. I. Helman, a witness for libelant in the above-entitled cause, being first duly sworn to testify the truth, the whole truth and nothing but the truth relative to said cause, made answer to the said respective Direct Interrogatories and Cross-interrogatories, as follows:

Answering Direct Interrogation No. 1, witness says: M. I. Helman; age 58; Wenatchee, Washington; Engineer City Pumping Plant.

Answering Direct Interrogatory No. 2, witness says: Chief Engineer of the Pacific Creosoting Company.

Answering Direct Interrogatory No. 3, witness says: About two or three years prior to 1908, and remained until February, 1911.

Answering Direct Interrogatory No. 4, witness says: I was living in one of the company cottages, and was at home at that time.

Answering Direct Interrogatory No. 5, witness says: It was. I should say it was about six hundred feet from, and parallel with the loading dock. [46]  
Unloading a cargo of creosote.

Answering Direct Interrogatory No. 6, witness says: I did.

Answering Direct Interrogatory No. 7, witness says: I was at home.

Answering Direct Interrogatory No. 8, witness says: I think that it was about eight hundred yards, in a direct line.

Answering Direct Interrogatory No. 9, witness says: Several of us secured a rowboat, and went aboard the "Sardhana."

Answering Direct Interrogatory No. 10, witness says: Yes.

Answering Direct Interrogatory No. 11, witness says: Went up the side of the bark. I do not remember whether by means of a rope-ladder or stairs. Probably one-half hour.

Answering Direct Interrogatory No. 12, witness says: When I reached the deck I saw smoke issuing from the after-hatch. Efforts were being made to extinguish the fire by the use of fire-extinguishers. Also men were using buckets with rope attached to them, hauling water over the side of the bark. Probably twenty or twenty-five men.

Answering Direct Interrogatory No. 13, witness says: It has been so long since the fire that I do not remember.

Answering Direct Interrogatory No. 14, witness says: I was told that the S. S. "*Horlmelon*" was rendering assistance.

Answering Direct Interrogatory No. 15, witness says: I do not know.

Answering Direct Interrogatory No. 16, witness

says: I do not know.

Answering Cross-interrogatory No. 1, witness says: I did not state that any particular part was burned.

Answering Cross-interrogatory No. 2, witness says: I do not know.

Answering Cross-interrogatory No. 3, witness says: For answer to this I refer to answer # 1 in cross-interrogatory. [47]

Answering Cross-interrogatory No. 4, witness says: See answer to cross-interrogatory #1.

Answering Cross-interrogatory No. 5, witness says: I have not.

Answering Cross-interrogatory No. 6, witness says: I did go below during the progress of the fire.

Answering Cross-interrogatory No. 7, witness says: I do not think that there was more than ordinary excitement on an occasion of that kind.

Answering Cross-interrogatory No. 8, witness says: As stated before, I saw smoke issuing from the after-hatch, and when I went below I saw smoke in the cabin. I saw no other evidence of fire, and immediately returned to the deck.

Answering Cross-interrogatory No. 9, witness says: I have no personal knowledge of any assistance.

Answering Cross-interrogatory No. 10, witness says: There was one by the name of A. O. Powell, Jr., and another by the name of Frank Kesce. I am not certain whether there were any others accompanying me or not.

M. I. HELMAN.

Subscribed and sworn to before me this 12th day of March, A. D. 1913.

[Seal] W. W. GRAY,  
Notary Public in and for the State of Washington,  
Residing at Wenatchee, in said State. [48]

[Indorsed]: Filed in the U. S. District Court,  
Western Dist. of Washington. Mar. 17, 1913.  
Frank L. Crosby, Clerk, By E. M. L., Deputy.  
[49]

---

[Title of Court and Cause.]

**Direct Interrogatories to be Propounded to Fred N. Beal.**

Direct Interrogatories to be propounded to Fred N. Beal, at Portland, Oregon, a witness to be produced, sworn and examined in a certain cause of admiralty and maritime jurisdiction now pending in the District Court of the United States, for the Western District of Washington, Northern Division, wherein Pacific Creosoting Company, a corporation, is libellant, against the Thames and Mersey Marine Insurance Company, Ltd., respondent, on behalf of said libellant, in accordance with the stipulation hereto annexed:

Direct Interrogatory No. 1:

State your name, age, residence and occupation.

Direct Interrogatory No. 2:

What was your occupation in the month of November, 1908?

Direct Interrogatory No. 3:

If your answer to Interrogatory No. 2 is that you

were the storekeeper at the plant of the Pacific Creosoting Company, a corporation, libelant herein, state how long you had been in the employ of the Pacific Creosoting Company, and how long you remained in their employ after November, 1908.

Direct Interrogatory No. 4:

State where you were on the evening of November 18, 1908, at about 9:30 o'clock. [50]

Direct Interrogatory No. 5:

State whether or not the British bark "Sardhana" was anchored in Eagle Harbor on November 18, 1908, and if so, state where the said ship was anchored, and what she was engaged in doing on said date.

Direct Interrogatory No. 6:

Did you hear a fire-alarm sounded from the British bark "Sardhana" at about 9:30 o'clock P. M. on said November 18, 1908?

Direct Interrogatory No. 7:

If you answer Interrogatory No. 6 in the affirmative, state just where you were located when you heard said fire-alarm.

Direct Interrogatory No. 8:

If you answer Direct Interrogatory No. 6 in the affirmative, state, as near as you can, the distance from the place where you were located at the time you heard the said fire-alarm to the place where the said bark was anchored on said night.

Direct Interrogatory No. 9:

If you answer Interrogatory No. 6 in the affirmative, state just what you did after hearing the said fire-alarm.

Direct Interrogatory No. 10:

State whether or not you went aboard the said bark

on the evening of November 18, 1908, after hearing the said fire-alarm.

Direct Interrogatory No. 11:

If you answer Interrogatory No. 10 in the affirmative, state how you got aboard the bark, and the approximate time which elapsed from the time you heard the fire-alarm until you were aboard the said bark.

Direct Interrogatory No. 12:

If in answer to Interrogatory No. 10 you state that you went aboard the said bark, state just what evidence there was of a fire aboard when you arrived, and also state what efforts [51] were being made to extinguish the fire, the number of men engaged, and the means employed in said work.

Direct Interrogatory No. 13:

State, if you know, what portions of the ship were burned by said fire.

Direct Interrogatory No. 14:

State whether or not any outside assistance from other ships in Eagle Harbor was offered or used in extinguishing the said fire.

Direct Interrogatory No. 15:

If you answer the preceding interrogatory in the affirmative, state what other ships offered assistance, and the approximate number of men from the crews of said ships who assisted in putting out the fire.

Direct Interrogatory No. 16:

If you answer Interrogatory No. 14 in the affirmative, state where the other ships were anchored with reference to the position of the "Sardhana."

**[Cross-interrogatories to be Propounded to Fred N. Beal.]**

[Title of Court and Cause.]

Cross-Interrogatories to be propounded to Fred N. Beal, at Walville, Wash., a witness to be produced, sworn and examined in a certain cause of admiralty and maritime jurisdiction now pending in the District Court of the United States for the Western District of Washington, Northern Division, wherein Pacific Creosoting Company, a corporation, is libellant, against Thames and Mersey Marine Insurance Company, Ltd., on behalf of said respondent, in accordance with the stipulation hereto annexed:

Cross-Interrogatory No. 1: If in answer to direct interrogatory 13 you have stated that any part of the bark "Sardhana" was burned by said fire, please state when it was that you first saw such burned portions of said ship.

Cross-Interrogatory No. 2: If in answer to direct interrogatory 13 you have stated that any part of said bark "Sardhana" was burned by fire, please give your present judgment of the area so burned, that is, if you have answered that the bulkhead was burned, state the width of the burned area and the height, and also if you have answered that the ceiling and floor was burned, state your judgment of the extent thereof in square feet. [53]

Cross-Interrogatory No. 3: If in answer to direct interrogatory 13 you have stated that the bulkhead door was a part of said bark burned by said fire, please state if the entire door was burned, or, if



not, just how much was burned, and state in this connection whether the burning of the door was such as to destroy its use as such.

Cross-Interrogatory No. 4: If in answer to direct interrogatory 13 you have named some portion of the bark known by you personally to have been burned by said fire, please state whether or not you have received from any one connected with this case, or with this deposition, any word or statement apprising you of any matter or thing connected with or concerning the extent or area of the burning done by said fire, either to the floor, ceiling, bulkhead or bulkhead door of said bark.

Cross-Interrogatory No. 5: Have you at any time learned by word of mouth of any kind that the bulkhead door of the "Sardhana" is now in the city of Seattle? If so, please state all that you have so learned and, if the knowledge came to you through written communication, please attach same hereto as part of your deposition, or give your reason for an inability to do so.

Cross-Interrogatory No. 6: If in answer to direct interrogatory 10 you have stated that you saw smoke coming from the cabin, please state whether you went below at any time during the progress of the fire or whether you remained on deck.

Cross-Interrogatory No. 7: Is it true that there was a good deal of excitement on board the bark "Sardhana" at the time of the fire?

Cross-Interrogatory No. 8: If in answer to direct interrogatory 10 you have made statements with reference to the said fire, and the efforts made to extinguish the same, is it not a fact [54] that your observations of the matters testified to were obtained while you were on the deck of the "Sardhana," and not while you were below?

Cross-Interrogatory No. 9: If in answer to direct interrogatory 14 you have stated that outside assistance from other ships was offered or used, please state from your personal knowledge all that you saw done by such outside assistance in the actual extinguishment of said fire.

Cross-Interrogatory No. 10: If in answer to direct interrogatory 11 you have stated how you got aboard the bark, please state who accompanied you at that time.

BRADY & RUMMENS,  
McCLANAHAN & DERBY,  
Proctors for Respondent. [55]

---

[Title of Court and Cause.]

**Answers of Witness Fred N. Beal, to Direct and Cross Interrogatories Hereto Attached.**

Fred N. Beal, a witness for libelant in the above-entitled cause, being first duly sworn to testify the truth, the whole truth and nothing but the truth relative to said cause, made answer to the said respective Direct Interrogatories and Cross-interrogatories, as follows:

Answering Direct Interrogatory No. 1, witness

says: My name is Fred N. Beal; age 35; a resident of Walville, Washington, and Storekeeper by occupation.

Answering Direct Interrogatory No. 2, witness says: I was Storekeeper at the plant of the Pacific Creosoting Company.

Answering Direct Interrogatory No. 3, witness says: In November, 1908, I had been in the employ of the Pacific Creosoting Company about two years, and I remained with them two years and one month after that date.

Answering Direct Interrogatory No. 4, witness says: I was at the residence of M. I. Helman, Chief Engineer.

Answering Direct Interrogatory No. 5, witness says: She was ready to discharge cargo, but had not started to do so, in Eagle Harbor, and was lying about one hundred yards off the wharf. [56]

Answering Direct Interrogatory No. 6, witness says: Yes.

Answering Direct Interrogatory No. 7, witness says: I was at the residence of M. I. Helman.

Answering Direct Interrogatory No. 8, witness says: On a direct line I was about four hundred yards from where the bark was anchored.

Answering Direct Interrogatory No. 9, witness says: I helped collect the fire-extinguishers from several places about the plant, placed them in a row-boat and proceeded to the vessel.

Answering Direct Interrogatory No. 10, witness says: Yes.

Answering Direct Interrogatory No. 11, witness

says: We climbed over the side of the bark. It was about ten or twelve minutes after I heard the fire-alarm until I reached the vessel.

Answering Direct Interrogatory No. 12, witness says: When I went aboard the boat there was a good deal of smoke, and several men with buckets were carrying water from the sides.

Answering Direct Interrogatory No. 13, witness says: The bulkhead between the cabin and after-hold was burned by the fire.

Answering Direct Interrogatory No. 14, witness says: Not to my knowledge.

Direct Interrogatories No. 15 and No. 16 witness is unable to answer. [57]

Answering Cross-interrogatory No. 1, witness says: Immediately after the fire was extinguished.

Answering Cross-interrogatory No. 2, witness says: Owing to the amount of smoke that was still in the vessel it is impossible for me to say as to the area burned.

Answering Cross-interrogatory No. 3, witness says: I don't know the extent of damage.

Answering Cross-interrogatory No. 4, witness says: I have never had any communication with anyone connected with this case regarding said fire.

Answering Cross-interrogatory No. 5, witness says: No.

Answering Cross-interrogatory No. 6, witness says: I went below.

Answering Cross-interrogatory No. 7, witness says: There was naturally considerable excitement on board.

Answering Cross-interrogatory No. 8, witness says: No.

Answering Cross-interrogatory No. 10, witness says: There were several other employees of the Pacific Creosoting Company with me when I went aboard, but cannot remember who they were.

FRED N. BEAL.

Subscribed and sworn to before me this 10th day of March, 1913.

CLAUDE L. CAVERLEY,  
Notary Public in and for the State of Washington,  
Residing at Walville. [58]

[Indorsed]: Filed in the U. S. District Court, Western Dist. of Washington. Mar. 17, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [60]

---

[Deposition of F. D. Beal.]

[Title of Court and Cause.]

BE IT REMEMBERED that at this time, to wit, February 22, 1913, pursuant to the stipulation hereunto attached and made a part hereof, the interested parties to the foregoing case met at room 903 Yeon Building, in Portland, Oregon, the libelant was represented by L. Bogle, Esq., proctor, and the respondent was represented by E. B. McClanahan, Esq., proctor. The witness, Mr. F. D. BEAL, being present, was sworn by me to tell the truth, the whole truth and nothing but the truth, thereupon was examined and testified as follows:

(Deposition of F. D. Beal.)

Direct Interrogatories by Mr. BOGLE.

Q. State your name, residence and occupation.

A. F. D. Beal; residence, Portland, Oregon; occupation, manager of the St. Helens Creosoting Company.

Q. How long have you been the manager of that company?     A. One year. [61]

Q. What was your business prior to that time?

A. For one year prior to that I was consulting engineer, and prior to that I was superintendent for the Pacific Creosoting Company for a little over four years.

Q. How long have you been in the creosoting business?     A. For 24 years.

Q. Were you in the employ of the Pacific Creosoting Company in November, 1908?     A. I was.

Q. Do you remember the British bark "Sardhana," being anchored in Eagle Harbor, Washington, in November, 1908?     A. I do.

Q. The plant of the Pacific Creosoting Company is located at Eagle Harbor?     A. It is.

Q. The said bark was engaged at that time in unloading creosote in drums?     A. Yes.

Q. Do you remember the incident of the fire aboard that bark on or about November 18, 1908?

A. Yes.

Q. What directed your attention to that fire?

A. The sounding of the alarm of fire aboard the "Sardhana."

Q. Where were you at the time you heard this alarm?

(Deposition of F. D. Beal.)

A. I was in the house of Chief Engineer M. S. Hellman.

Q. What did you do on hearing this alarm sounding?

A. I immediately went to the works, secured fire-extinguishers and placed them in a boat and went aboard the vessel with the fire-extinguishers. [62]

Q. About what length of time elapsed from the time you heard the fire-alarm until you were aboard the British bark "Sardhana" while you were engaged in getting the fire-extinguishers and going aboard? A. Ten to 20 minutes.

Q. Did you see any evidence of fire aboard the "Sardhana" when you arrived aboard? A. I did.

Q. State what you saw in the way of evidence of fire.

A. On first going aboard I was told the fire was aft underneath the cabin deck. I went right back into the place indicated and saw the cabin was full of smoke which was coming out of the little hatchway of the dining-room of the cabin which had been opened, the smoke was coming from the lazaret or storeroom below.

Q. Did you have any fire-extinguishers with you?

A. I did.

Q. How many men went aboard with you?

A. From six to ten. Mr. Douglas and Fred Beal and myself collected the men around the plant and gathered up the fire-extinguishers.

Q. Do you remember how many fire-extinguishers you had with you?

(Deposition of F. D. Beal.)

A. We must have had eight to ten. We grabbed everything in sight. We had them distributed around the plant and we took every one in sight.

Q. What were the crew of the "Sardhana" doing when you got aboard?

A. They were carrying water down in there, passing it down [63] from hand to hand.

Q. About how many men were engaged in that work?

A. I should judge we had eight to ten men and he had all his own crew; they were strung out from the cabin out to the rail dipping the water over the side and passing it in in buckets.

Q. You immediately went below to the scene of the fire? A. I did.

Q. Just what evidences were there of a fire at the time you got below?

A. The fire was still burning on this bulkhead. It had been partly extinguished but there was some fire there still.

Q. Were the fire-extinguishers used in extinguishing the fire? A. They were.

Q. About how long after your arrival did it take to put the fire out?

A. At the time it was entirely out I should judge it was about 30 minutes from the time I arrived on board.

Q. How many men were below in the immediate vicinity of the fire engaged in trying to extinguish it?

A. I should judge about four men.

Q. What were they doing when you arrived?



(Deposition of F. D. Beal.)

A. Some of them were pouring water on and others were pulling out the dunnage, clearing it out of the way to get the fire extinguished.

Q. After your arrival did you assist in putting out the fire?     A. I did.

Q. Were any of the other men from the creosoting company [64] below with you assisting in putting out the fire?     A. Yes.

Q. You and other men from the creosoting company were using fire-extinguishers, were you?

A. Yes.

Q. After your arrival did the crew of the "Sardhana" use any more water in trying to put out the fire?

A. My recollection is that they did not. They may have passed down a few buckets but I believe we completed putting out the fire with the extinguishers.

Q. Approximately how many buckets of water were used in putting out that fire before the fire-extinguishers were used, if you know?

A. I don't know.

Q. State if you know how many buckets of water were used after you got there.

A. Approximately from six to ten.

Q. After your arrival?

A. Yes, the use of the buckets was discontinued after we arrived with the extinguishers.

Q. Mr. Beal, was there any other outside assistance offered and used in extinguishing this fire outside of the employees of the creosoting company?

A. Yes, some of the crew of the steamer

(Deposition of F. D. Beal.)

“Hornelen” came aboard and were assisting.

Q. Did any of the crew of the “Jupiter” come aboard to your knowledge?

A. No, I could not say to my knowledge that they did or did not. They might have been there; I don’t remember. [65]

Q. Did you on that night see the extent of the fire and the amount of damage, that is, the portions burned of the door and the bulkhead?

A. As to seeing the extent of the damage that night, I did not on account of it being dark and congested down there.

Q. Did you afterwards make an examination of the portions burned? A. Yes.

Q. State what portions of the ship were burned.

A. The portion that was burned was that bulkhead.

Q. Was the door in the bulkhead burned to any extent?

A. The grating door was burned to a slight extent.

Q. To what extent was the bulkhead below outside of the portion of the door that was burned?

A. I don’t know that I could say positively now; it has been so long ago, just to what extent the bulkhead was burned. It was burned quite a little bit and was spread out from the door; just to what extent along there I am unable to say at the present time.

Q. Do you know or remember now whether or not any of the dunnage was burned or scorched?

A. Yes, it was.

(Deposition of F. D. Beal.)

Q. Do you remember whether any portion of the ceiling was burned or smoked, and blistered?

A. It was smoked and blistered, but I can't say now if the ceiling was burned.

Q. Do you remember any portion of the ceiling was scorched?

A. I cannot remember how much of the ceiling was burned.

Q. That is, you don't remember if it was actually on fire? [66] A. No.

Q. Did you see it was damaged to any extent?

A. No, I should say the ceiling was not damaged to any extent.

Q. Beyond being blistered?

A. Beyond being blistered and smoked up.

Q. Mr. Beal, do you know at what point, or do you know the fire point or temperature at which creosote is inflammable?

A. That depends; anywhere from 700 to 900 degrees Fahrenheit, depending on the creosote.

Q. Was this bulkhead which you have testified was burned to some extent a permanent part of the ship?

A. It was.

Q. The door which you said was burned was built in the bulkhead? A. Yes.

Q. Did the fire-extinguishers assist to any great extent in putting out this fire? A. They did.

Q. In your opinion, Mr. Beal, would the fire have been a larger fire and done greater damage if the fire-extinguishers had not been furnished and they had depended absolutely on the use of water in put-

(Deposition of F. D. Beal.)

ting out the fire?

Objected to by counsel for respondent as immaterial.

A. Yes, I think the probabilities are the fire would have been of much greater extent had the fire-extinguishers not been used. [67]

Q. Do you remember the incident of a lighter loaded with creosote in drums capsizing in the harbor? A. I do.

Q. Do you remember at this time approximately the number of drums on that lighter or scow?

A. No, I don't. I should judge from my recollection that there were from 150 to 200 drums. My recollection is it was only partially loaded.

Q. Do you remember the condition of the weather upon the night this scow capsized?

A. Yes, my recollection is it was a clear night.

Q. I mean as to the weather on the night the scow capsized. A. It was not raining.

Q. I refer to the state of the wind.

A. Practically no wind that night.

Q. Is your recollection of that very clear?

A. Yes.

Q. I will hand you this paper and ask you if that is your affidavit. A. Yes.

Q. I will ask you to examine that paper and say if that will refresh your recollection of the incident.

A. Oh, you refer to the weather the night the scow capsized?

Q. Yes.

A. Yes, there was a gale that night. I thought

(Deposition of F. D. Beal.)

you referred to the night of the fire.

Q. No, the night the scow capsized.

A. There was a gale that night. [68]

Q. The statement which I have handed to you was made by you at about what date?

A. About December 2d, 1908.

Q. That was very shortly after the incident of the scow capsizing?

A. Yes, a week or ten days. The scow capsized on November 21st and this was on December 2d.

Q. Your recollection of the facts would be much clearer at that time than at the present date?

A. Yes.

Q. Did you make any examination of the scow subsequent to the time she was capsized?

A. Not a critical examination, other than it was customary in getting scows for that work to look them over as to condition to see whether they were suitable for the purpose.

Q. Do you remember at this time whether any repairs were made to that scow?

A. I have no recollection of any repairs having been made to the scow.

Q. Who was the owner of the scow, or did it belong to your own company? A. No.

Q. Did it belong to the stevedores?

A. No, it belonged to one of those small companies in Seattle; it was not Drummond's; it was one of the small independent companies out there. I did know the name of the company at that time but have forgotten it now.

(Deposition of F. D. Beal.)

Q. Do you remember how this scow was moored to the "Sardhana"?

A. It was tied with lines alongside the vessel.  
[69]

Q. Was the side of the scow flush up to the side of the vessel? A. Yes, right alongside the vessel.

Q. Do you remember the direction of the wind on that night?

A. My recollection is it was a southeast wind.

Q. Do you know of your own knowledge what caused the scow to capsize?

A. Yes, I know what caused it to capsize. The real cause of the scow capsizing, it got water in it and the water ran to one side of the scow, putting it on an uneven keel and the weight carried it over.

Q. Did she have water in her the night she capsized before sending her out?

A. No, we examined those scows every night, and sounded them for water to see that they were on an even keel.

Q. Did you sound her on this night?

A. Yes, we did every night.

Q. Was there any water in her then?

A. Practically none to speak of. There is always more or less water in the bottom of these scows but there was no water that we would consider as a dangerous proposition to the scow if she had remained as she was.

Q. How did the water have anything to do with her sinking?

(Deposition of F. D. Beal.)

A. Additional water got into the scow during the night.

Q. How did that water get in?

A. Supposedly on account of the storm.

Mr. McCLANAHAN.—I don't care for suppositions.

A. Well, this has to be more of a supposition than anything else because I could not swear to that, that water got into [70] her on account of the wind, possibly because of the rolling of the scow but of course that is my supposition.

Proctor for respondent moves to strike out the supposition of the witness.

Q. As a matter of fact, your entire statement as to water having gotten into her at all is a supposition?

A. That is true.

Mr. BOGLE.—I ask that all that testimony be stricken out.

A. We judged that from the condition of the scow and the amount of water that was in her.

Q. You have no personal knowledge of whether or not that was what caused her to sink?

A. No, not personal knowledge.

Q. Was not the scow afterwards examined and surveyed by Mr. Frank Walker, marine surveyor?

A. I would not say positively. My recollection is it was. Whether he came there and made the examination of that scow I would not say positively at this time.

Q. I hand you a paper with a letter I on it, being respondent's one in this case, and ask you what that is.

(Deposition of F. D. Beal.)

A. That is a statement covering the cargo of the "Sardhana."

Q. Is that your signature?      A. It is.

Q. I wish you would explain if you now remember how that statement was compiled.

A. These figures were taken from an examination and inspection of the drums at the time of being discharged from the "Sardhana," immediately on completion of the cargo, or soon thereafter.

Q. Does that statement correctly show the number of drums [71] discharged in good condition and the number of drums damaged, and the number of drums which were empty?      A. It does.

Q. I hand you this paper, being Respondent's Exhibit Two, and ask you if you have any knowledge of that exhibit.

A. I can't say that I have of that particular paper. These figures were evidently—they correspond with those figures, it is evidently a copy taken from that. I remember we gave Mr. Walker a statement, and from my recollection I should judge that is their copy of the original we gave him. I won't say positively that was the statement I handed him.

Q. Statement of what?

A. Statement of the damaged *froms* on the "Sardhana."

Q. The statement, Respondent's Exhibit Two, refers to gallons and not drums?      A. Yes.

Q. Is that a statement of the contents of the damaged drums?

A. So far as the number of drums concerned, yes.



(Deposition of F. D. Beal.)

As to the number of gallons I could not say from the data I have at the present time that that is.

Q. Where would that information be secured—in other words, where would the measurement of the number of gallons be made?

A. They would be made at the Pacific Creosoting Company plant, at Eagle Harbor.

Q. You were the superintendent of that plant at that time, were you?     A. I was.

Q. Would these measurements be made under your direction? [72]     A. Yes.

Q. Do you remember whether Mr. Frank Walker made a survey of the damaged cargo, drums and creosote lost ex the "Sardhana"?

A. He made a survey of the condition of the drums. The statement that he made in regard to the number of gallons I think was taken from our records. I don't think he personally measured the oil that came out of these particular drums.

Q. What is the usual method of measuring the oil in damaged drums to ascertain the amount in the drums and to get at the amount which was missing?

A. The oil was measured in square tanks into which these particular drums were dumped.

Q. Do you know whether or not that was done in this instant?     A. It was.

Q. That would be the only way you could ascertain the number of gallons that were missing from those drums?     A. Yes.

Q. At this time you don't remember the exact figures, do you?

(Deposition of F. D. Beal.)

A. No. There is one item there of 171 drums, amounting to about 8,458 gallons that I can locate in my records covering that. The other two drums were separated out from other figures in some way.

Q. Do you swear positively that the first item on Respondent's Exhibit Two was correct and corresponds with your figures?

A. Yes, that it corresponds with my original figures as made.

Q. Is there any other source from which other items could be obtained, except from your figures?

A. Yes, that should be obtained from copies and from records [73] and reports in the Pacific Creosoting Company's office.

Q. They were compiled from your figures?

A. Yes.

Q. The only way that could be obtained was from that original measurement made under your direction? A. Yes.

Q. You furnished Mr. Walker with copies of your reports, didn't you?

A. Yes, I believe this is a copy of the record we furnished him.

Q. You are now referring to Respondent's Exhibit Two?

A. Yes, that is my recollection that this is a copy of the report given him, and is compiled or was compiled from our record and figures.

Q. Do you know how many gallons of creosote were taken out of the hold of the "Sardhana," that is, loose gallons?

(Deposition of F. D. Beal.)

A. From my records I am able to locate a little over 4,000 gallons, about 4,200; whether there are more that came from the "Sardhana," I can't just now state. There are some other notations there, but it is not stated specifically.

Q. Can you find a record of any more than 4,200 gallons having been taken out of the hold?

A. All that I have an exact record of is the 4,200 gallons.

Q. The book to which you are referring, is that your original record made by you, or by someone of your clerks under your direction?

A. It was made by my inspector under my supervision.

Q. Were the entries made by you? [74]

A. No, the entries were made by my inspector.

Q. Who was your inspector at that time?

A. A. O. Powell, Jr.

Q. Have you any independent recollection at this time of the approximate number of gallons of creosote lost in this shipment? A. No, I have not.

Cross-examination by Mr. McCLANAHAN.

Q. Was any meter used in the measurement of the creosote from the damaged drums? A. No.

Q. It was simply dumped or poured from the drums into a receptacle known to contain so many gallons and measured in that way? A. Yes.

Q. And this statement contained on Respondent's Exhibit Two is the statement of the creosote so dumped from the partially damaged or partially emptied drums and measured in this receptacle?

(Deposition of F. D. Beal.)

A. Yes.

Q. Referring to Respondent's Exhibit One, what did you mean by this expression therein: "As to the quantity of oil received in this cargo we can't even hazard a guess as it is practically impossible to give anything within reach of what she brought."

A. That would be as to the contents of the drums, and that was before the time the drums were dumped and therefore it would have been impossible at the time of making that statement to make a statement other than as to the condition of the drums before being dumped. We had no knowledge of the amount of oil contained [75] in the drums until after dumping them and measuring the contents in this tank after they were dumped.

Q. When were these damaged drums dumped?

A. Approximately some time between the latter part of December and along up to the first of March. This statement was made on March 8th. We have records of dumping there on the "Sardhana" from December 1st—prior to December 1st. I have a record of 24,572 along the latter part of November and up until March.

Q. What date in March?

A. I should judge from this up to the first of March.

Q. From the latter part of November up to the first of March?

A. Here is 197 from the "Sardhana" on March 5th. It extended along into March. That is the last I have any record of here, March 5th. That is

(Deposition of F. D. Beal.)

the only thing I have to show the dumping of the damaged drums and March 5th is the last.

Q. You have a record, then, of the measuring of the creosote in the damaged drums extending from the latter part of November to the 5th of March?

A. No, I have notations of the dumping from the damaged drums from the latter part of November to March.

Q. Does this notation or the notations you have enable you to testify that during that period at different intervals the drums were dumped and measured?

A. Not as they stand now. The only thing I have to go by is this statement on the number of drums here corresponding with this, this being made March 8th. I would testify these drums were dumped prior to March 8th or we would not have been able to make up that statement. [76]

Q. You are referring to Respondent's Exhibit One?

A. Yes. This corresponds to Respondent's Exhibit Two and this was made March 8th.

Q. I don't quite follow you. You mean you have nothing to enable you to testify when these drums were measured other than Respondent's Exhibit Two?

A. That is all I could possibly swear to.

Q. You would not want to say that the drums were measured out much before March 8, 1909?

A. No, not positively, I could not state that.

Q. Where were these drums during all this period,

(Deposition of F. D. Beal.)

from the date of their discharge up to March 8, 1909?

A. They were on the ground near our dumping plant at Eagle Harbor in the yards.

Q. Do you know why they were not measured sooner than that?

A. My recollection was that our storage capacity in the tanks was pretty well taken and we only dumped the drums as we had room in the tanks for them.

Q. That refers to full drums; did you dump them at any time and measure them?

A. Yes, the drums received were dumped and measured.

Q. Do you remember when you measured the full drums?

A. My notations here on the figures extend from that time over into May, 1908—May 13th, 1909, is the last one I have.

Q. Have you any means of ascertaining the amount of creosote from the full drums received by you off the "Sardhana"?

A. No. Those records would be with the Pacific Creosoting Company. I have none here. [77]

Q. Were those full drums measured in the same way that the creosote in the partially damaged drums were measured? A. Yes.

Q. No meter was used? A. No.

Q. Have you a meter there for the purpose of measuring creosote?

A. We did not at the time I was there.

Q. You were there and would know if they had

(Deposition of F. D. Beal.)

one? A. I would have known it.

Q. Did you have any knowledge at the time of the time that the lighter capsized?

A. No, not of my own personal knowledge. I knew it capsized some time between six o'clock at night and six o'clock in the morning is all.

Q. You say that the wind blowing that night was a southeast gale? A. That is my recollection.

Q. Do you remember your little jetty or wharf running out into the harbor—was it a dock?

A. Yes, I remember that.

Q. That would be struck on the right-hand side facing north by this southeast gale? A. Yes.

Q. When did you retire that night, do you remember the hour approximately?

A. No, I remember it was Saturday night, I think it was.

Q. How do you remember there was a wind blowing that night?

A. I remember it wakened me up during the night.

[78]

Q. Did you get up?

A. No, I don't think I did.

Q. Did you look at the time? A. No.

Q. I presume, Mr. Beal, that your statement with reference to the barge capsizing through filling with water was made because that would be the only means that would capsize the barge?

Objected to by counsel for libelant because there is no testimony in this case to that effect and nothing to show such a fact.

(Deposition of F. D. Beal.)

A. That would be my judgment, that would be the only thing that could capsize the barge—her filling with water.

Q. On the night of the fire there was a good deal of excitement, was there not? A. Yes.

Q. Caused by the inflammability of the cargo of the "Sardhana"? A. Yes.

Q. How large was the lazaret that you entered through the hold in the cabin floor?

A. It was approximately the width of the vessel in the stern, and I should judge in length approximately 15 or 20 feet.

Q. Just room there to get down there.

A. Just down the ladder there.

Q. Did you go down a ladder or stairs?

A. Down a ladder.

Q. Were these stores piled between the ladder and the bulkhead where the fire was? [79]

A. Not at the time I went down. They possibly had been piled there but had been cleared away to make room to get to the fire.

Q. Were indications such as to denote that they had been cleared away? A. Yes.

Q. So you had a free passage?

A. So they could carry and pass the water down; they were using buckets of water.

Q. If these buckets were filled by means of a pump operated on the ship did you see how they handled the buckets after they were filled—were they passed from man to man?

A. Passed from man to man and down through



(Deposition of F. D. Beal.)

this little hatchway.

Q. From man to man?      A. Yes.

Q. How long a distance was it from the fore part of the ship to this cabin manhole that you entered to go into the lazaret?

A. You mean from the bow of the ship?

Q. Yes, to the peak.

A. Yes—I judge it was all of three-fourths of the distance from the fire, of the entire length of the ship.

Q. Can you approximately state what that distance was? I don't remember the distance of the length of the ship.

A. I should approximate 125 to 150 feet. That would be only an approximation.

Q. If that pumping was done from the fore part of the ship, then those buckets were passed from man to man to this hatchway?

A. I don't recollect any pumping being done.

[80]

Q. I say if it was done .

A. If it was done; yes.

Q. That was rather a slow process, was it not?

A. That is my recollection, that the water was dipped over the sides with buckets and the men were strung along from the cabin down to the hatch.

Q. We had a witness on the stand yesterday who said there was pumping done.

A. It might possibly have been, I won't say there was no pumping. I don't recollect it.

(Deposition of F. D. Beal.)

Mr. BOGLE.—I don't think he said they were pumping.

Mr. McCLANAHAN.—His testimony would show. He said it was pumped from the fore part of the ship.

Q. You said you saw evidence of some of the dunnage having been effected by the fire? A. Yes.

Q. That was loose dunnage which was lying on the 'tween-decks?

A. No, it was dunnage that was sticking out from underneath the drums, that the drums were piled on, and also there were some loose down in there, that had dropped down in there evidently.

Q. Did you examine that dunnage to see if it was saturated with creosote or not?

A. It would not be saturated. Some of the surface of it might have had some on it, but it was not saturated.

Q. Now, Mr. Beal, a number of witnesses have testified to having inspected that fire. The bulkhead door of the [81] "Sardhana" has been brought from England and was also seen by these witnesses that I refer to. I think there were five who testified that the bulkhead door was all that was burned.

Mr. BOGLE.—I object to the form of the question.

Mr. McCLANAHAN.—I have not finished.

Mr. BOGLE.—I don't think there were five witnesses.

Mr. McCLANAHAN.—I don't think it is fair to object in the middle of the question. You know very well in this proceeding I am going to finish my question.

(Deposition of F. D. Beal.)

Mr. BOGLE.—I want my objection to go to the form of the question as far as you have proceeded.

Question read as follows: “Now, Mr. Beal, a number of witnesses have testified to having inspected that fire. The bulkhead door of the ‘Sardhana’ has been brought from England and was also seen by these witnesses that I refer to. I think there were five who testified that the bulkhead door was all that was burned.”

Q. (Continued.) Some times our memory is effected by the judgment and memory of others. I am simply making this statement of giving you some idea of the memory of others and to see how distinctly your memory of that fire was. Are you perfectly clear, in the light of my statements, and if that refreshes your memory any, and if it is refreshed, that there was any appreciable burning of the wood-work outside of the door itself—the door was six feet wide, as you remember it, and was a sliding door with slats in the top, if you remember that?

A. I remember that the door was a kind of a slatted grate door but as to whether it was a sliding door or not, I don't remember. [82] My impression now, since you spoke of it, I think it was a sliding door. According to my recollection the fire extended beyond the door and through a portion of the bulkhead. A lot of these things come back to me now since you have brought them up. From my recollection I would state the bulkhead was burned as well as the door, but to what extent in measurement besides that I would be unable to state.

(Deposition of F. D. Beal.)

Q. Do you remember, Mr. Beal, that the whole bulkhead was slatted in the same way the door was slatted?

A. My impression from recollection was it was. I don't know either positively as to that, all the way across the ship.

Q. If that is your impression isn't it quite likely you may be confused as to the extent of the fire beyond the door, the door and the bulkhead being somewhat of the same subscription?

A. No, I don't think so. I am quite clear in my recollection that some of these slats were burned as well as the slats on the door, especially to the right of the door facing the stern of the ship, that is the forward side of the bulkhead facing the side of the ship toward the door, and some of the slats were burned outside of the door.

Q. Were there any indications of separate seats of the fire? If I do not make myself clear tell me and I will try to do so.      A. No.

Q. The fire seemed to have been located in one place and from that spread?

A. From what I saw of it I considered the fire started in one place. It was narrowing down from that bulkhead going along here, as I recollect it, the door coming in here somewhere. [83]

Q. Will you please draw a sketch of the way you remember it and we will introduce that sketch in evidence.

The witness makes a sketch which he uses with his answer.

(Deposition of F. D. Beal.)

A. The door was nearer one side of the ship than it was to the other. From what I recollect the seat of the fire seemed to be along in this position somewhere. The fire seemed to crawl up here and to spread both ways from the seat of the fire, extending across the door in this way and extending somewhat to the right of the door from this point as it came up. The portion on my sketch marked X is the location of the door (X door). A, B, C and D would represent the 'tween-deck. F would represent the slatted bulkhead.

Q. Will you on that place the position of the seat of the fire as you remember it and your recollection of how it spread.

A. The X in a circle represents the seat of the fire, as near as I can recollect it.

Q. Will you please place from the X in a circle something to indicate your best recollection of how the fire spread? Make it with dotted lines.

A. I don't recollect how it went up. This is my recollection as near as I can place it now. It spread from the seat and seemed to widen out as it came up.

Q. You have no recollection of how high it went?

A. On the door itself—my remembrance of it is that the door itself as well as some of this along in here was burned.

Q. You mean the door itself was, from your recollection, [84] burned up to this point?

A. That will show within ten to twelve inches of the top.

Q. Don't you remember, Mr. Beal, that the door

(Deposition of F. D. Beal.)

was of the same construction of the bulkhead?

A. Yes.

Q. So that on your diagram here when you left out the slat construction seemingly that was done simply to indicate in the diagram the place where the door was located? A. Yes.

Q. I will ask you to sign your name to that and the same will be introduced in evidence.

The same sketch was signed by the witness and offered in evidence and marked "Beal's Exhibit One, J. K. S. Feb. 22, 1913. F. D. Beal," and the same is returned herewith, and made a part hereof.

Q. Did you actually see any water thrown on the fire? A. Yes.

Q. Then they had gone from the lazaret on to the 'tween-decks and were fighting the fire from that side.

A. No, this lazaret, you might say, was in the 'tween-decks; it was a continuation of the 'tween-decks back in the cabin floor.

Q. Had they passed through the door?

A. Yes, they had to pass through the door; they came down to the little hatchway, and passed through here, through the door to the front of the bulkhead itself, through the door.

Q. And next beyond the bulkhead the drums were stored? A. Yes.

Q. And there is a little alley-way between the bulkhead and the drums?

A. Yes, a small space, just space enough so that a man could [85] barely crowd along here between

(Deposition of F. D. Beal.)

the bulkhead and next to the drums.

Q. And they had freed that place of the fire before you got there?     A. Yes.

Q. Do you remember who was in that little space fighting the fire when you got there with your extinguishers?     A. The captain was there.

Q. Was he not in charge of the operations?

A. Yes, he was directing the operations.

Q. Did he give way to you when you came in, Mr. Beal, or did the water still continue to flow?

A. My recollection is that as soon as we got down there with the extinguishers we put out the fire with the extinguishers and the use of the water was discontinued.

Q. What made that fire spread, in your opinion? It required a number of buckets of water and fire-extinguishers to extinguish it; was it because of the creosote?

A. Well, to a certain extent, yes. The smoke was very dense down in there and coming off the creosote it was hard to get right at the seat of the fire there on account of the smoke and the limited amount of space they had for working in there. It was a kind of a smoldering fire and on account of the thick smoke it was kind of a hard proposition to locate very quickly the exact seat of the fire. It was a question of kind of working to it as you went along.

Q. It was dark smoke, was it not?

A. It was pitch dark down in there and smoky.

[86]

Q. What was your purpose in visiting the seat of

(Deposition of F. D. Beal.)

the fire after extinguishing it—I understand you visited it two or three days afterwards?     A. Yes.

Q. What was the object of doing that?

A. As far as I was personally concerned, it was more out of curiosity than anything else, to see the exact location, and how it looked in there in daylight. More or less curious as to how a fire could get started down in a place of that kind. I think that was it more than anything else that prompted me to go down there and examine it.

Q. Did you have anything to do with furnishing the facts as to the extent of this fire to your company?

A. Nothing further than what is embodied in my statement as sworn to here before the notary public.

Q. What statement is that, please? Please produce it.

A paper is handed the witness by his counsel, Mr. Bogle.

A. That is the only recollection I have of furnishing any statement, that statement there is the only one I can recall, outside of various conversations, but as to just what they were I could not say now.

Q. In this case, the respondent has asked a number of interrogatories of the libelant; the libelant says the bulkhead was burned, together with other parts of the ship, and the respondent asked the libelant what other parts of the ship were burned, and the libelant said the floor and ceiling. Did you furnish them with any such information as that?



(Deposition of F. D. Beal.)

A. I have no recollection of furnishing that information. [87]

Q. We asked them if any repairs were made to the ship and they said, yes, the bulkhead was replaced by a new one; did you furnish that information?

A. No, I don't remember of furnishing that information.

Q. We asked them how much of the bulkhead was burned and they said about two-thirds of it; did you furnish that information?

A. I have no recollection of doing so.

Q. You have no recollection?

Mr. BOGLE.—The witness has testified that all the information he furnished is contained in a statement which he has produced and we are willing to offer the statement in evidence.

Q. Did you furnish the Creosoting Company with any facts with reference to the capsizing of the lighter, Mr. Beal?

A. Yes, my recollection is that I did.

Q. What were those facts?

A. They are embodied in that statement I referred to a moment ago.

Q. Have you another statement?

A. This one. (Witness exhibits the statement to counsel.)

Redirect Examination by Mr. BOGLE.

Q. What is the construction of this creosoting tank—how is it constructed so that you can measure creosote if there is no meter?

A. It was a square tank of which we knew the

(Deposition of F. D. Beal.)

dimensions and the cubical contents were figured out so we could measure the creosote gallons by the depth of oil in the tank. [88]

Q. How could you tell, Mr. Beal, from the height of oil in this tank the depth it was in the tank?

A. We usually, or in fact always, measured it by taking a stick and measuring the distance down from the top.

Q. How did you make the measurements?

A. Ordinarily by placing down a stick at the side of the tank from this given point into the oil and measuring the distance from this given point to the surface of the oil.

Q. And in that way you could calculate the number of gallons of oil in the tank?

A. Yes, to the dot.

Q. You testified there was no meter on this tank; you meant no regular constructed mechanical device which would tell you the number of gallons by placing it in the oil or pouring the oil through it?

A. That is what I meant.

Q. The tank was so constructed that you could calculate the number of gallons just as accurately by your method? A. Yes.

Q. That is what you meant when you said there was no meter?

A. Yes. My inception of a meter is a mechanical device used to pour the oil through and which registers the amount of oil which goes through it.

Q. You had no such device as that?

A. No, we had none.

(Deposition of F. D. Beal.)

Q. Do your records there show the dates this creosote from the damaged drums were dumped and measured? A. No. [89]

Q. You testified they were dumped somewhere from the latter part of November to the 8th of March; do you know upon what dates during that period they were dumped?

A. No, I could not tell from this record. These notations just show that they were dumped between those dates.

Q. Where were these damaged drums stored from the time they were taken off the ship until they were dumped in the tank and measured?

A. In the yards near the dumping tank of the creosoting plant.

Q. Were these drums examined by yourself or under your direction to see whether they were leaking or not?

A. They were examined by me personally.

Q. How were they placed then?

A. They were laying down on small bearing cases we had on the ground for rolling them on.

Q. Do you know whether any appreciable amount of creosote leaked from these drums from the time they were taken from the ship until dumped into the tank?

A. No, the drums that we left in the yard that were taken from the ship were not leaking; those that were we dumped at once. The ones that were left there were sound and not leaking.

Q. You testified in answer to one of counsel's

(Deposition of F. D. Beal.)

questions, or rather he asked you if there was any way for this scow to capsize if she had no water in her. I believe you answered that was your opinion that that was the only way she could capsize.

A. This is my judgment. [90]

Q. Mr. Beal, if this cargo of creosote drums had shifted to one side of the barge wouldn't that make the barge capsize?

A. That is true if they shifted to one side.

Q. If the barge collided during this gale with the "Sardhana," causing the drums to all shift to one side of the barge, would not that probably cause the barge to capsize?

A. Yes, if it were possible for the drums to shift to one side of the scow, that is true.

Q. If water got into the hold of this barge and she listed to one side the drums would shift before she capsized, wouldn't they?

A. In my judgment, no. I don't think it was possible for the drums to shift on the scow until the scow was in the attitude of capsizing, then they would shift and go over with her.

Q. In the attitude of capsizing, you mean with a heavy list, don't you?

A. Yes, when she commenced to capsize she would go all at once.

Q. How were these drums loaded?

A. They were laid down in the scow and well loaded.

Q. Were they loaded in tiers? A. Yes.

Q. Were the upper tiers fastened in any way?

(Deposition of F. D. Beal.)

A. It is my recollection that there was only one tier, the lower tier, on the scow at the time.

Q. If the testimony of the stevedores with reference to the loading of this scow was that there were two tiers of drums, with one above the other, would it not be possible for this upper tier to shift in heavy weather? A. Not in my judgment. [91]

Q. What would prevent the upper tier from shifting if the barge collided with a scow or something else during the night during a heavy swell?

A. The bands on the drums would prevent them from sliding. The whole thing would have to move at once.

Q. If she bumped very severely and took a severe list would the drums shift?

A. No, I don't think that possible; I don't think it possible for these drums to shift only on the capsizing of the scow.

Q. Only on the capsizing of the scow?

A. No, I don't think it possible.

Q. What do you base your notion on—your opinion on—have you had any experience in loading, such as would enable you to give such an opinion on that subject?

A. Yes, I have had a great deal of experience in loading and handling scows.

Q. If this scow was afterwards surveyed by a competent surveyor and it was found she was perfectly tight and not leaking or making any water, how could you say she could possibly capsize?

Objected to by counsel for respondent unless it be

(Deposition of F. D. Beal.)

stated to the witness the character of the survey that was made.

Question read.

A. I don't believe it would be possible for that scow to capsize unless she did have water in her.

Q. Is it your opinion the water came from the top of the scow in order to get into the scow?

A. Yes, that is my opinion.

Q. With your dotted lines you have indicated on your Exhibit [92] One the lines or direction of the fire?

A. As near as my recollection goes it was something of that character.

Q. And then is it your testimony the fire extended on the right as indicated by the dotted line to the right of this exhibit across the bulkhead?

A. Yes, as far as my recollection goes now. I have no recollection of the fire extending to the left of the door, and my recollection is it did extend some little distance to the right of the bulkhead.

Q. Is that your recollection, the place I am indicating here?

A. No, just in there, where it is dotted.

Q. Here you don't recollect?

A. I have no recollection of that. The fire at the bottom was confined to one point. It was very smoky and very dark down there, and the smoke spread as it arose, and the fire also had a tendency to spread and did spread as I have indicated it there on my sketch.

Q. Mr. A. O. Powell, Jr., was your inspector?

(Deposition of F. D. Beal.)

A. Yes.

Q. Did you make these entries in this book from which you have been testifying?     A. I did.

Excused.

IT WAS STIPULATED that the witness need not sign his deposition but that the certificate of the notary taking the deposition would be accepted by counsel the same as if the witness had signed the same.

JULIA KIRKER SAYRE, (Seal)

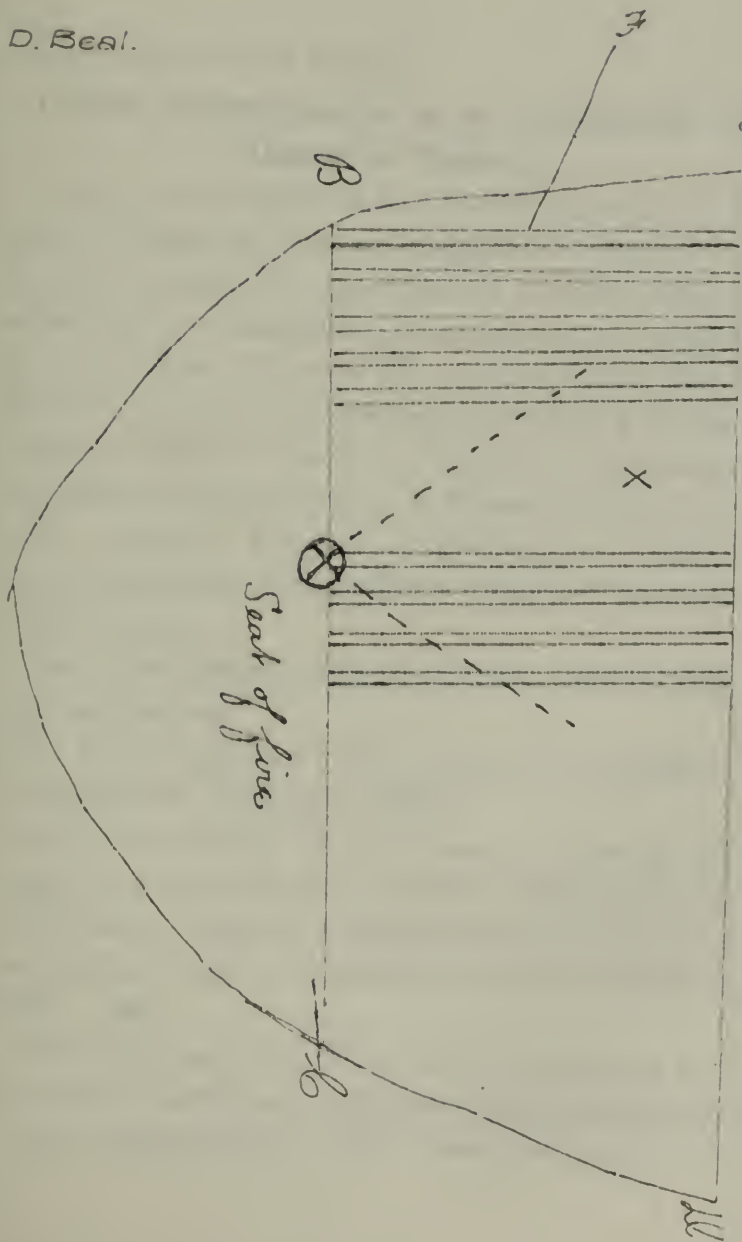
Notary Public. [93]





BEAL'S EXHIBIT ONE  
J. K. S. Feb. 22, 1913.

F. D. Beal.





[Indorsed]: Filed in the U. S. District Court, Western Dist. of Washington. Mar. 17, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [95]

---

[Title of Court and Cause.]

**[Direct Interrogatories to be Propounded to  
Alexander Wallace.]**

Direct interrogatories to be propounded to Alexander Wallace at London, England, a witness to be produced, sworn and examined in a certain cause of admiralty and maritime jurisdiction now pending in the District Court of the United States for the Western District of Washington, Northern Division, wherein Pacific Creosoting Company, a corporation, is libellant, against Thames & Mersey Marine Insurance Company, Limited, respondent, on behalf of said respondent in accordance with the commission hereto annexed.

1st Interrogatory: State your name, age, residence and occupation.

2d Interrogatory: What was your occupation in the month of November, 1908?

3d Interrogatory: If your answer to the 2d interrogatory is that you were master of the British bark "Sardhana," state how long you had been such master and how long you remained such after November, 1908. [96]

4th Interrogatory: When were you last on board the bark "Sardhana" and where was she at the time?

5th Interrogatory: Where was said bark on No-

vember 18th, 1908, and were you then on board of said bark?

6th Interrogatory: Did anything unusual happen on said bark on said day and, if so, what was it?

7th Interrogatory: If your answer to the 6th interrogatory is that there was a fire on board said bark on said day, state in detail the nature and extent of said fire, the parts of the ship damaged by it and the nature and amount of said damage.

8th Interrogatory: State in detail the means used and the length of time it took to extinguish said fire.

9th Interrogatory: In the work of actually extinguishing said fire was any outside assistance rendered?

10th Interrogatory: Was a survey held on account of said fire?

11th Interrogatory: Were any repairs made to your ship on account of said fire?

12th Interrogatory: Were any repairs made necessary thereby?

13th Interrogatory: If your answer to the 11th interrogatory is that no repairs were made on account of said fire, state, if you know, what would have been the approximate cost of such repairs, if they had been made.

14th Interrogatory: If you state in answer to the 7th interrogatory that the door of the wooden bulkhead separating the lazarette from the after 'tween-decks was damaged by said fire, state whether you can produce said door at the present time.

15th Interrogatory: If your answer to the 14th interrogatory is in the affirmative, please produce

said door and have the same marked as an exhibit of this your deposition.

16th Interrogatory: Is said door as produced by you in exactly the same condition as it was immediately after said fire? If not state what is the difference in condition. [97]

17th Interrogatory: Did you make an extended protest at any time after said fire?

18th Interrogatory: If your answer to the 17th interrogatory is in the affirmative, state when and where said protest was made, at whose request and under what circumstances and where the same now is.

19th Interrogatory: If said protest contains substantially the following statement, and the same is not in accordance with your present testimony, explain, if you can, any inconsistencies between the two. The statement referred to is as follows: "After considerable trouble the fire was extinguished, and it was then discovered that the afore-said bulkhead together with the door thereof (the bulkhead was built in the vessel), and the dunnage in the after 'tween-decks, were burnt and some of the ship's stores in the lazarette were damaged by water and chemicals."

20th Interrogatory: The Pacific Creosoting Company, libelant in this case, has been asked certain questions in regard to the nature and extent of the fire on board the "Sardhana," to which you have testified, and in answering one of the interrogatories propounded to it said libelant says that the floors and ceiling of the "Sardhana" near the bulkhead were burnt by the said fire. Is that statement true or false?

21st Interrogatory: Further answering another interrogatory propounded to it with reference to said fire, said libelant says that two-thirds of the said bulkhead was burnt and charred by the said fire. Is that statement true or false?

22d Interrogatory: Further answering another interrogatory propounded to it with reference to said fire, said libelant says that the damage caused to the "Sardhana" by said fire was such as to require repairs, and that the repairs were made by the ship's [98] carpenter and consisted of removing the burnt bulkhead and building a new one in its place. Is that statement true or false?

23d Interrogatory: Further answering another interrogatory propounded to it with reference to the difficulties encountered in extinguishing said fire, libelant says: "That the difficulties encountered in extinguishing the fire were that stores were piled on one side of the bulkhead and drums of creosote, dunnage, etc., on the other, and that the lumber was saturated with creosote making the same very inflammable, and that it required hard work on the part of the crew of the 'Sardhana' and the persons so assisting them to extinguish the fire." Is this statement with reference to the difficulties encountered in extinguishing the said fire true or false?

24th Interrogatory: What cargo was the "Sardhana" carrying in November, 1908?

25th Interrogatory: Where was said cargo stowed on said vessel?

26th Interrogatory: Where was said cargo being carried to and to whom was it consigned?

27th Interrogatory: Was said cargo, or any part thereof, lost during the voyage to the port of Eagle Harbor and, if so, state the details of how such loss occurred and the amount of such loss.

28th Interrogatory: If in answer to the 27th interrogatory you say, *inter alia*, that there was a leakage of certain creosote in drums on board said bark, state in what part of the ship said leakage took place.

29th Interrogatory: What, if anything, was done with the creosote which had leaked out of the drums? Give full details.

30th Interrogatory: State if you can approximately how much of said creosote which so leaked out of the drums was lost.

31st Interrogatory: Did the Pacific Creosoting Company have [99] anything to do with the creosote that had leaked from the drums into the ship's hold? If so, give details.

32d Interrogatory: Did you cause your ship and cargo to be surveyed in the said month of November, 1908?

33d Interrogatory: If it should be said that as a result of a survey, or at all, 741 drums of creosote carried on board your ship on said voyage were found damaged or worthless, and that 56,267 gallons of creosote were found to have been lost, what have you to say as to the truth or falsity of such statements?

34th Interrogatory: If your answer to the 33d Interrogatory is that such statements are false, please state in detail your reason for so testifying.

35th Interrogatory: Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause. If so, set forth the same fully and at large in your answer.

McCLANAHAN & DERBY,  
Proctors for Respondent. [100]

---

[Title of Court and Cause.]

**Cross-interrogatories to be Administered to Alexander Wallace.**

Cross-interrogatories to be administered to Alexander Wallace, a witness to be produced, sworn and examined in a certain cause of admiralty and maritime jurisdiction, now pending in the District Court of the United States for the Western District of Washington, Northern Division, wherein Pacific Creosoting Company, a corporation, is libelant, and Thames & Mersey Marine Insurance Company, Ltd., is respondent, on the part and behalf of libelant in said cause.

1. Cross-interrogatory No. 1: Did you not make an extended protest as master of the bark "Sardhana," on December 28, 1908?

2. Cross-interrogatory No. 2: Did not George W. Wylie, as mate of said bark "Sardhana" at that time, and three seamen on said bark, join with you in such protest?

3. Cross-interrogatory No. 3: Did not you and



said Wylie and said seamen swear to such protest at Mukilteo, State of Washington, before one Wm. W. Olwell, a Notary Public?

4. Cross-interrogatory No. 4 : Did not such protest contain true copies of entries [101] in the log-book of said bark "Sardhana"?

5. Cross-interrogatory No. 5: Were not such entries in said log-book and such statements in said protest, true as made?

6. Cross-interrogatory No. 6: Did you not state in such protest as follows:

Nov. 18th: "Stevedores continued to discharge the cargo and at 5:00 P. M. finished for the day. 291 further drums were discharged. About 9:30 P. M. smoke was discovered issuing from the after hatch, by one of the crew, who immediately notified the master and then gave the alarm. This alarm was responded to by the crews of the ship 'Jupiter,' the S. S. 'Hornelen' and the employees of the Pacific Creosoting Company who brought with them several chemical fire-extinguishers. The master went below through the lazarette and saw the reflection of the fire over the top of the bulkhead between the after 'tween-decks and the lazarette. The after 'tween-decks were still full of cargo. After considerable trouble the fire was extinguished and it was then discovered that the aforesaid bulkhead, together with the door thereof (the bulkhead was built in the vessel) and the dunnage in the after 'tween-decks were burned, and some of the ship's stores in the

lazarette were damaged by water and chemicals. The origin of the fire was not discovered.”

7. Cross-interrogatory No. 7: If your answers to any of the direct interrogatories propounded to you herein, are not in accordance with said statements in your said protest, or in accordance with the entries in said log-book, or if you now say that [102] the statements in said protest, or any of them, are not true, do you mean to have the Court understand that you swore falsely in making such protest?

8. Cross-interrogatory No. 8: Did you not testify as a witness in behalf of the Pacific Creosoting Company, libelant herein, in a cause pending in the above mentioned Court, in which Knohr & Burchard, Nfl., owners of the Danish ship “Jupiter,” were libelants, and said Pacific Creosoting Company was respondent, being cause No. 3837 of said court, which had reference to a shipment of creosote from Liverpool to Eagle Harbor, on said Danish ship “Jupiter,” during the year 1908?

9. Cross-interrogatory No. 9: Were you not examined as such witness in said last mentioned cause by one Ira A. Campbell, proctor for respondent and cross-libelant in said last mentioned suit?

10. Cross-interrogatory No. 10: Did you not testify as such witness in said last mentioned suit on January 18, 1909, at Seattle, Washington, in answer to the following questions, as follows:

“Q. I will hand you this document and ask you what it is.

A. This is an extended protest.

Q. Sworn to by you? A. Yes, sir.

Q. Before whom?

A. Before the notary public at Mukilteo.

Q. Just give us his name.

A. William W. Olwell.

Q. Is that your signature attached to that?

A. Yes, sir.

Q. What date did you swear to that?

A. On the 28th day of December, 1908.

Q. Does this extended protest refer to the matters concerning the present voyage from London to Puget Sound?

A. Yes, sir, from London to Puget Sound.

Q. Did you swear to any other extended protest? A. No.

Q. I will ask you whether or not the statement of facts contained in this protest relating to the weather which you encountered on your voyage, are true. [103]

A. That is quite true.

Q. I will ask you whether or not the statement of facts contained in this extended protest is a true copy of the entries in your log.

A. Quite true.

Q. You mean by quite true, entirely true?

A. Entirely true. The weather as it was recorded in the log-book is experienced; this is a copy of the original log."

11. Cross-interrogatory No. 11: Did you not testify truthfully as such witness?

12. Cross-interrogatory No. 12: If any of your answers to the direct interrogatories propounded to

you by respondent herein, or your answers to any of the cross-interrogatories propounded to you by libellant herein, are inconsistent with your testimony as such witness, do you now mean to have the Court understand that you testified falsely as such witness?

13. Cross-interrogatory No. 13: When was your attention called for the first time, to the matter of said fire, after you made said protest and gave your testimony as such witness?

14. Cross-interrogatory No. 14: How often and when has your attention been called to the matter of said fire since said time, and by whom, and how often have you thought of said matter since said time?

15. Cross-interrogatory No. 15: If you now testify differently from your said protest, or differently from your testimony as such witness, who suggested such change in your testimony, and when was such suggestion made?

16. Cross-interrogatory No. 16: Is it not true that when said fire was discovered on the "Sardhana" on November 18, 1909, a fire-alarm was sounded on said ship?

17. Cross-interrogatory No. 17: [104] Did not the members of the crew of the steamship "Horn-elen" and/or the employees of the Pacific Creosoting Company respond to such alarm?

18. Cross-interrogatory No. 18: Is it not true that you had only commenced to unload the "Sardhana" the day before the fire, as stated in said protest? Is it not true that stores were piled on one side of the bulkhead which was burned, and that drums of creo-

sote, dunnage, etc., were piled on the other side?

19. Cross-interrogatory No. 19: Is it not true that the lumber and dunnage, and the lower decks of the "Sardhana" near said bulkhead, were saturated with creosote?

20. Cross-interrogatory No. 20: Did you not also make the following statements in said protest:

"1908.

May 30th: This vessel sailed from London with a cargo of creosote in iron drums bound for Eagle Harbor. Nothing to be noted here occurred until

June 6th: When it was discovered that the carpenter's sounding rod was very slightly colored with creosote.

July 11th: The crew were employed placing extra chocks amongst the cargo.

July 29th: The gale continued as before; likewise the sea. The vessel again rolled heavily and pitched badly. Later the squalls blew with hurricane force. The ship rolled and pitched badly in a high confused sea and much water was shipped on deck. Towards night it was discovered that the cargo in the hold had commenced to work. The crew entered the hold from the lazarette and secured it as well as possible.

July 30th: The gale still continued. The ship rolled and pitched heavily and took much water on deck, fore and aft. The cargo worked as before and the crew

again entered the hold to secure it.

[105]

- July 31st: The gale moderated the first part of the day but increased again later. Much water was shipped on deck. The cargo worked as before and the crew entered the hold through the ventilator hatch and secured it as well as possible.
- Aug. 1st: A fresh gale was experienced and the ship rolled and pitched heavily in a high beam sea. Again the cargo worked.
- Aug. 7th: The crew were employed securing the cargo.
- Aug. 25th: A hard gale was encountered accompanied by a heavy sea. Much water was shipped on deck. The cargo worked again badly.
- Aug. 26th: Similar conditions were experienced.
- Aug. 31st. A moderate gale was experienced. The decks were frequently awash and the cabin and deck houses were flooded. The cargo worked heavily.
- Sept. 1st: A moderate gale with hard squalls was experienced. The vessel shipped large quantities of water over all. The cargo worked heavily.
- Sept. 4th: A strong gale was experienced accompanied by a high sea in which the vessel labored and strained badly. The cargo worked as before. The hold was entered through the main ven-

tilator and the drums were found to be adrift and were rolling about in all directions. It was impossible to secure the cargo until the weather moderated.

Sept. 14th: The crew were employed cutting up spare spars and blocking off the cargo with them.

Sept. 28th: It was noticed by the soundings in the pump well that there was an increase of liquid which appeared to be mostly creosote.

Nov. 3d: Similar conditions were encountered and the cargo again worked badly.

Nov. 17th: Stevedores commenced to discharge the cargo and they discharged 136 drums."

21. Cross-interrogatory No. 21: Did you personally have charge of the discharge of the cargo of creosote from the "Sardana"?

22. Cross-interrogatory No. 22: Did you personally count damaged drums of the cargo delivered to the Pacific Creosoting Company from the "Sardana"? [106]

23. Cross-interrogatory No. 23: Did you personally measure any creosote of this cargo not in drums, which was delivered to the Pacific Creosoting Company?

24. Cross-interrogatory No. 24: Did not one Frank Walker, a marine surveyor of Seattle, Washington, survey said bark "Sardana" for said fire loss?

25. Cross-interrogatory No. 25: Did not said

Frank Walker also survey said bark "Sardana" and cargo, for loss of or damage to cargo during said voyage?

26. Cross-interrogatory No. 26: Did not said Frank Walker also make a survey for the loss of cargo from the barge which was overturned in the bay, while the "Sardana" was being unloaded?

27. Cross-interrogatory No. 27: If you say that the report of either of such surveys made by said Frank Walker is untrue in any particular, state whether or not you so testify of your own personal knowledge, or from what others have told you.

28. Cross-interrogatory No. 28: Is it not a fact that you had extremely severe weather on the said voyage from London to Eagle Harbor?

29. Cross-interrogatory No. 29: Is it not a fact that the cargo of drums worked on said voyage, and that some of said drums were damaged?

30. Cross-interrogatory No. 30: Did you not, in giving your testimony as a witness as above referred to, state as follows: "A damaged drum, in my opinion, would be one that was a detriment to the contents." [107]

31. Cross-interrogatory No. 31: In answering the direct interrogatories here propounded to you, did you not mean by "damaged drums" those which were so damaged as to be a detriment to the contents?

32. Cross-interrogatory No. 32: Did not some of the creosote of said cargo escape into the hold of said vessel, because of the very severe weather encountered on the said voyage?

33. Cross-interrogatory No. 33: Was not some of



said cargo of creosote lost because of such severe weather?

34. Cross-interrogatory No. 34: Was not said bark "Sardana," in your opinion, seaworthy and properly manned, equipped and provisioned in all respects, when she left London on said voyage, for the said voyage?

35. Cross-interrogatory No. 35. Was not said cargo, in your opinion, then properly stowed for the voyage you were then about to make?

36. Cross-interrogatory No. 36: Was not all damage to and loss of drums and/or creosote of said cargo, except the loss from the barge or lighter in the bay at Eagle Harbor, due to the severe weather encountered on said voyage?

37. Cross-interrogatory No. 37: Did you not testify as a witness, as aforesaid, as follows:

"Considerable of your cargo or some of your cargo was damaged, was it not?

A. Yes, there was.

Q. Some of the cargo worked on the voyage?

A. Yes.

Q. And that was caused by stress of weather, was it not?

A. Yes, by stress of weather." [108]

38. Cross-interrogatory No. 38: Did not you also testify as such witness as follows:

"Q. And some of the time you were unable to get down into the hold to look after the cargo at all? A. Yes, sir.

Q. And it was during that time that the cargo worked loose?

A. Well, it was working loose all the time during the bad weather; that was the first start of it.

Q. Now, you consider your cargo stowed properly to weather any kind of ordinary weather that you would anticipate on that voyage, didn't you?     A. Yes.

Q. The way that cargo was stowed it would not have worked loose had you experienced ordinary weather, which you do experience at that time of year in that latitude and longitude, would it?

A. Well, moderate weather it would have been all right.

Q. Any weather that you would have expected?

A. Yes, sir.

Q. It would have stood?     A. Yes, sir.

Q. Without working loose?     A. Yes, sir.

Q. You say some of it did work loose, some of the drums were broken so that the creosote leaked out into the hold of your vessel?

A. Yes, sir.

Q. And some of the drums were dented?

A. Yes, sir.

Q. And otherwise injured? You say much water was shipped on deck?

A. Yes, she took quite a lot of water at times.

Q. The fact is that the weather you experienced in rounding the Horn on this voyage was exceptionally severe weather, was it not?

A. Yes, it was the worst weather I ever had coming around.

Q. And continued for an exceptionally long time.     A. Yes.

Q. Can you tell about how long it took you to get around the Horn from the time you first struck the bad weather until you got around the other side?

A. I believe it was the best part of six weeks.

Q. Can you tell what the ordinary sailing time for a vessel like yours was to make that same voyage?

A. Well, we ought to have done it in about two weeks less, any way.

Q. You ought to have made it in four weeks?

A. Yes, we ought to."

39. Cross-interrogatory No. 39: Did not you and/or the ship's agent at Seattle have some trouble with the Pacific Creosoting Company, libelant in this case, relative to the payment of freight on the "Sardhana's" cargo [109]

40. Cross-interrogatory No. 40: Was not all of said cargo in apparent good order and condition when received on said ship?

BOGLE, MERRITT & BOGLE,  
Proctors for Libelant.

[Indorsed]: Filed in the U. S. District Court, Western Dist. of Washington. Sep. 12, 1912. Frank L. Crosby, Clerk. By \_\_\_\_\_, Deputy. [110]

---

**[Deposition of Alexander Wallace.]**

[Title of Court and Cause.]

New York, 4 October, 1911.

Deposition of ALEXANDER WALLACE, taken under direct interrogatories and cross-interroga-

(Deposition of Alexander Wallace.)

tories propounded to said witness by me, Adeline Sessions, a notary public at the city of New York, State of New York, pursuant to stipulation for the taking of said deposition dated August 26, 1911, and signed by the proctors for the respective parties in the above-entitled suit.

The witness, ALEXANDER WALLACE, being by me duly sworn, deposes as follows:

To the 1st interrogatory the witness answers:

A. Alexander Wallace; age, 35; my home address is Elizabeth Street, Tayport, Fifeshire, Scotland.

To the 2d interrogatory the witness answers:

A. I was master of the British bark "Sardhana."

To the 3d interrogatory the witness answers:

A. I was master from the 9th of August, 1907, to the 3d of May, 1911. [111]

To the 4th interrogatory the witness answers:

A. On the 2d of May, 1911, at Dunkirk, in France.

To the 5th interrogatory the witness answers:

A. At Eagle Harbor, Washington. I was on board on that day.

To the 6th interrogatory the witness answers:

A. There was a small fire broke out in the after between-decks; it was a piece of bagging stuff, bur-lap, that caught fire in the between-decks.

To the 7th interrogatory the witness answers:

A. The nature of the fire—as regards the nature of the fire, I would say it was a very trifling affair; the damage to the ship was practically nothing. The lazarette door was slightly charred and blistered, a very small part of it. As far as I can remember,

(Deposition of Alexander Wallace.)

there were only about two feet or  $2\frac{1}{2}$  feet of it from the bottom of the door up that was blackened by the fire and a little bit charred.

To the 8th interrogatory the witness answers:

A. The fire was put out in about three minutes; not more than five minutes, anyway, by about half a dozen buckets of water being thrown on it.

To the 9th interrogatory the witness answers:

A. Absolutely none; there was an offer of outside assistance, but it was after the fire had been extinguished.

To the 10th interrogatory the witness answers:

A. No. [112]

To the 11th interrogatory the witness answers:

A. No, absolutely none at all.

To the 12th interrogatory the witness answers:

A. No.

To the 13th interrogatory the witness answers:

A. The only repairs that could have been done to the door was to give it a coat of new paint, and that would have been done in any case; I would say that there was no cost at all. The door would have been painted in any case, whether it had been burned or not.

To the 14th interrogatory the witness answers:

A. I understand that the door is on board the "Majestic," which is due to arrive here to-morrow, and I would recognize the door if it were here; but my vessel is in Philadelphia and I expect to sail thence to-morrow and it will not be possible for me to attend here to-morrow.

(Deposition of Alexander Wallace.)

To the 15th interrogatory the witness answers:

A. This can be done if it can be arranged that the door and I could be in the same port.

To the 16th interrogatory the witness answers:

A. I can tell you one difference without seeing it, and that is the marks that we put on it; we branded it with the branding irons, so that we would know it, with the ship's name on it.

To the 17th interrogatory the witness answers:

A. Yes.

To the 18th interrogatory the witness answers:

[113]

A. It was made at Mulkiteo, State of Washington, near Seattle on the 28th day of December, 1908; that was made at the request of the Pacific Creosoting Company, Eagle Harbor, before William W. Olwell; the Pacific Creosoting Company asked me for the mate's log-book and I gave it to them, and thereafter they presented to me the extended protest for signature. I don't know where it is now.

To the 19th interrogatory the witness answers:

A. The trouble we had in extinguishing the fire was to get to where the fire was, as it had to be approached through the lazarette, and the floor space in the lazarette was occupied with the ship's stores, and we had to carry the buckets of water over the top of the stores, and the difficulty experienced was walking over barrels, getting over the obstructions. The bulkhead itself was not burned; it was the door that was burned, or charred, rather; if you are going to distinguish the door from the

(Deposition of Alexander Wallace.)

bulkhead I consider that the door is the bulkhead, or part of the bulkhead; and if you are going to mention the door and the bulkhead, I would say it was only the door that was burned. I was not responsible for the language of the extended protest or the entries in the mate's log. The fact is that only the door was scorched and slightly charred, in part, and I did not see and do not see any use in distinguishing between door and bulkhead, as I consider the door a part of the bulkhead.

To the 20th interrogatory the witness answers:

A. I would say it was false; the floor was not burned. [114]

To the 21st interrogatory the witness answers:

A. That is false, too.

To the 22d interrogatory the witness answers:

A. That is absolutely false.

To the 23d interrogatory the witness answers:

A. One part of it is true in so much that the stores were in the way and that the cargo was stored on the opposite side of the bulkhead; but the lumber was not saturated with creosote, and it was not hard work on the part of the crew of the steamer to extinguish the fire, except as I have explained above, and no outside assistance was rendered at all.

To the 24th interrogatory the witness answers:

A. Creosote in iron drums.

To the 25th interrogatory the witness answers:

A. In the lower hold and between-decks.

To the 26th interrogatory the witness answers:

A. It was being carried to Eagle Harbor and con-

(Deposition of Alexander Wallace.)

signed to the Pacific Creosoting Company.

To the 27th interrogatory the witness answers:

A. There was a small loss owing to leakage; the only loss is what we couldn't gather up again; bale up out of the bottom of the ship, out of the limbers; and the loss was what would stick to the bottom of the ship—you could hardly consider it as a loss.

[115]

To the 28th interrogatory the witness answers:

A. There was a small leakage all over the cargo, but the biggest leakage was in the fore lower hold, and amidships abreast of the main ventilator where several drums broke adrift and were found to be cut.

To the 29th interrogatory the witness answers:

A. The creosote which leaked out of the drum was pumped out of the ship by the ship's crew into barrels supplied by the Pacific Creosoting Company. What couldn't be pumped out of the ship was baled out and put into the barrels; the Pacific Creosoting Company took delivery of that.

To the 30th interrogatory the witness answers:

A. I suppose there would be about two or three drums lost; it would take that much to wet the bottom of the ship all over.

To the 31st interrogatory the witness answers:

A. Yes; they took delivery of it; they received it as part of the cargo; they furnished the barrels to receive it in.

To the 32d interrogatory the witness answers:

A. Nothing further than the usual survey on the



(Deposition of Alexander Wallace.)

ship's arrival at any port; the hatches and the stowage of the ship was surveyed as usual. [116]

To the 33d interrogatory the witness answers:

A. I would say it was false.

To the 34th interrogatory the witness answers:

A. My reason for saying that is that the Pacific Creosoting Company took delivery of the cargo and never made any claims against the ship for damages to the cargo, or for shortage; the same as they did in the case of the "Jupiter"; the "Jupiter" was discharging the same time as we were. And further from verbal reports from the manager of the Pacific Creosoting Company's plant at Eagle Harbor, made to myself, that the cargo had burned out in good condition; also from my own knowledge as to the extent of the leakage and the way in which the creosote came out in the pumps and in the buckets.

To the 35th interrogatory the witness answers:

A. I can say that I think that part of the leakage was due to the drums not being strong enough, because we observed creosote in the limbers before we cleared the English Channel, so that all the leakage wasn't due to the drums that were damaged on the passage. As matter of fact I had rejected quite a number of drums in London of this same shipment, and all the drums were of the same general character. [117]

To the 1st cross-interrogatory the witness answers:

A. Yes.

To the 2d cross-interrogatory the witness answers:

A. Yes.

(Deposition of Alexander Wallace.)

To the 3d cross-interrogatory the witness answers:

A. Yes.

To the 4th cross-interrogatory the witness answers:

A. I believe so; I did not make the entries in the log-book, but I believe the entries were true in general.

To the 5th cross-interrogatory the witness answers:

A. The entries in the log-book were not made by me; but on analyzing the entries and making a careful or a minute examination of the parts of the ship said to be damaged, I find that several corrections should be made.

To the 6th cross-interrogatory the witness answers:

A. Yes.

To the 7th cross-interrogatory the witness answers:

A. I do not mean the Court to understand that I swore falsely in making the protest; but I mean the Court to understand that certain corrections should be made, and perhaps some of the language used in the protest is misleading because the fact is that although the alarm was responded to by the crews of the ships "Jupiter" and the steamship "Horn-elen," and that some employees of the Pacific Creosoting Company brought with them chemical fire-extinguishers, the fire, as matter of fact, was put out, as I have testified, by the use of about half a dozen buckets of water, and the only difficulty was in getting to the fire [118] because of the obstructions I have mentioned; I went below into the lazarette and saw the glare of the fire through ventilation holes near the top of the bulkhead; the bulk-

(Deposition of Alexander Wallace.)

head reaches from one deck to the other and it would be impossible to see over it. I did not regard this statement, however, as of any importance and therefore did not correct it, the extended protest having been already prepared for my signature. As to the dunnage in the after between-decks, one or two small pieces in the immediate vicinity of the fire may have been charred in a way similar to the door. The ship's stores were damaged through the water being spilled on them. The chemical fire-extinguishers were used after the fire was put out, as a matter of precaution, and the stores were possibly damaged with chemicals also.

To the 8th cross-interrogatory the witness answers:

A. I answered certain questions before a court stenographer, in some court; but I do not remember the title of the action or who were the parties to it.

To the 9th cross-interrogatory the witness answers:

A. I believe that there was a Mr. Campbell who was one of the attorneys, but who he was attorney for and what was the name of the case I do not remember.

To the 10th cross-interrogatory the witness answers:

A. I do not remember in what suit it was, but the testimony quoted is in substance as I remember it.

[119]

To the 11th cross-interrogatory the witness answers:

A. I certainly intended to do so.

To the 12th cross-interrogatory the witness answers:

A. Certainly not.

To the 13th cross-interrogatory the witness answers:

(Deposition of Alexander Wallace.)

A. It was some time early in April this year; I don't remember the exact date.

To the 14th cross-interrogatory the witness answers:

A. I never heard of it again until my arrival in New York, and I have not thought of it very often; I have been busy with my other duties.

To the 15th cross-interrogatory the witness answers:

A. Nobody suggested any changes.

To the 16th cross-interrogatory the witness answers:

There was no fire on November 18th, 1909. I presume that the question refers to the fire of November 18th, 1908, and there was a fire-alarm sounded on the ship; but at the time the alarm was sounded it wasn't known whether the fire was serious or not; we never take any chances.

To the 17th cross-interrogatory the witness answers:

A. They responded, but the fire was out before they got there.

To the 18th cross-interrogatory the witness answers:

A. We started to discharge cargo a day or two days before the fire; I can't exactly say which; I don't think it is right to say that the stores were piled on one side of the bulkhead, or that the bulkhead was burned; they [120] were stowed there; the drums of creosote were stowed on the other side of the bulkhead.

To the 19th cross-interrogatory the witness answers:

A. Is not true.

To the 20th cross-interrogatory the witness answers:

A. I did; but the dates in the question in several instances skip intervening entries on other days not

(Deposition of Alexander Wallace.)

referred to in the question, and I wish to call attention to the fact that the "similar conditions" referred to in the entry of November 13th refer to weather experienced on November 2d as copied into the protest.

To the 21st cross-interrogatory the witness answers:

A. No; the cargo was discharged by stevedores who were under my supervision.

To the 22d cross-interrogatory the witness answers:

A. No; the damaged drums were counted by the mate.

To the 23d cross-interrogatory the witness answers:

A. I did not personally measure any cargo, not in drums; but I am satisfied myself that all of the creosote that had leaked out of the drums was delivered to the Pacific Creosoting Company. I was an eye-witness.

To the 24th cross-interrogatory the witness answers:

A. Certainly not, to my knowledge.

To the 25th cross-interrogatory the witness answers:

A. Frank Walker was not the man that I knew to be the surveyor for the Pacific Creosoting Company; it was another man altogether; I never saw Frank Walker on board [121] the ship at 11; I know him well.

To the 26th cross-interrogatory the witness answers:

A. I don't know whether he did or not; I had delivered that cargo and got receipt for it.

To the 27th cross-interrogatory the witness answers:

A. My testimony is all of my own personal knowledge, and where the report of Mr. Walker is incon-

(Deposition of Alexander Wallace.)

sistent with my testimony his report is wrong.

To the 28th cross-interrogatory the witness answers:

A. We had bad weather, yes.

To the 29th cross-interrogatory the witness answers:

A. Some of the drums worked and some of the drums were damaged on that account.

To the 30th cross-interrogatory the witness answers:

A. Yes; by "detriment to the contents" I mean so that the contents could leak out.

To the 31st cross-interrogatory the witness answers:

A. Yes.

To the 32d cross-interrogatory the witness answers:

A. Some of it did; not all of it. We knew that there was creosote in the limbers before we encountered any bad weather at all; the entry of June 9th covers that.

To the 33d cross-interrogatory the witness answers:

A. I didn't consider that any creosote was lost at all; it was all delivered to the Pacific Creosoting Company and they made no claim for lost creosote at all. [122]

To the 34th cross-interrogatory the witness answers:

A. Yes, she was seaworthy in all respects.

To the 35th cross-interrogatory the witness answers:

A. It was properly stowed.

To the 36th cross-interrogatory the witness answers:

A. The damage to the drums was due to the bad weather encountered, except such of the drums as were inherently defective, and permitted the leakage which we found before the rough weather came on; there was no loss of drums.

(Deposition of Alexander Wallace.)

To the 37th cross-interrogatory the witness answers:

A. Yes.

To the 38th cross-interrogatory the witness answers:

A. In substance it seems to me what I testified to.

To the 39th cross-interrogatory the witness answers:

A. No, there was no question of payment of the freight at all; it was paid in full.

To the 40th cross-interrogatory the witness answers:

A. Yes; I rejected what we considered bad drums.

ALEXANDER WALLACE.

ADELINE SESSIONS. [123]

[Indorsed]: Deposition of Alexander Wallace, taken under direct interrogatories and cross-interrogatories. New York, October 4, 1911. Filed in the U. S. District Court, Western Dist. of Washington. Sept. 12, 1912. Frank L. Crosby, Clerk. By \_\_\_\_\_, Deputy. [124]

---

[Title of Court and Cause.]

**Direct Interrogatories to be Propounded to E. D. Rood.**

Direct interrogatories to be propounded to E. D. Rood at Los Angeles, California, a witness produced, sworn and examined in a certain cause of admiralty and maritime jurisdiction, now pending in the District Court of the United States for the Western District of Washington, Northern Division, wherein Pacific Creosoting Company, a corporation, is libellant, against Thames & Mersey Marine Insurance Company, Ltd., respondent, on behalf of said libel-

lant, in accordance with the stipulation hereto annexed:

Interrogatory No. 1: State your name, age, residence and occupation.

Interrogatory No. 2: What was your occupation in the month of November, 1908?

Interrogatory No. 3: If your answer to Interrogatory No. 2 is that you were Assistant Manager of the Pacific Creosoting Company, a corporation, libellant herein, state how long you had been such officer, and how long you remained such after November, 1908.

Interrogatory No. 4: Were you on board the bark "Sardhana," after she arrived at the plant of libellant in Eagle Harbor, on November 9, 1908?

Interrogatory No. 5: If you state that you were on board said vessel after her said arrival, state when you first went on board her, and how often you were aboard said vessel thereafter.

Interrogatory No. 6: Did you see the condition of the cargo on said vessel before and/or at the time the same was discharged therefrom? [125]

Interrogatory No. 7: If you answer the last interrogatory in the affirmative, state fully in what condition you found said cargo of said vessel.

Interrogatory No. 8: If you say that any part of the iron drums composing said cargo were damaged, state the number of such damaged drums, as near as you can, and the extent of the injury thereto.

Interrogatory No. 9: Had any part of said cargo escaped into the hold of said vessel?

Interrogatory No. 10: Was all of the creosote of



said cargo delivered to the Pacific Creosoting Company, libellant herein, and if not, state if you know, the amount of such short delivery.

Interrogatory No. 11: Did you know of a fire occurring on board said bark "Sardhana" on November 18, 1908?

Interrogatory No. 12: Were you on board said vessel at the time of said fire, and/or at any time thereafter?

Interrogatory No. 13: State fully all you know of your own knowledge concerning said fire, the nature and extent thereof, the parts of the ship damaged thereby, the nature and amount of damage to said ship and cargo, and what difficulties, if any, were encountered in extinguishing said fire.

Interrogatory No. 14: State, if you know, what if any cargo was piled on the 'tween-decks of said ship, at or near the bulkhead where said fire occurred, and what if any, stores were in the lazarette at or near the said bulkhead.

Interrogatory No. 15: Was or was not the dunnage and lumber near said bulkhead more or less covered with creosote, and if so, was or was not such dunnage and lumber more inflammable because of such fact?

Interrogatory No. 16: State, if you know, whether or not any repairs were made on said ship on account of said fire, and if such repairs were so made, by whom were they made.

Interrogatory No. 17: State, if you know, whether or not a lighter alongside said vessel, loaded with drums of creosote from said vessel, capsized on

November 21, 1908; and if you say that it did, state fully the circumstances connected therewith, the amount of cargo thereon, and what became of such cargo.

Interrogatory No. 18: If you say said lighter did capsize and drums of creosote from said cargo were thereby precipitated into the sea, state fully what was afterwards done to recover the same, how many, if any, were recovered, how many, if any, were not recovered, and what if any expense was incurred in recovering said lost cargo. [126]

Interrogatory No. 19: Do you know, or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this your examination, on the matters in question in this cause. If so, set forth the same fully and at large in your answer.

BOGLE, MERRITT & BOGLE,  
Proctors for Libellant. [127]

---

[Title of Court and Cause.]

**Cross-interrogatories to be Propounded to E. D.  
Rood.**

Cross-interrogatories to be propounded to E. D. Rood at Los Angeles, California, a witness produced, sworn and examined in a certain cause of admiralty and maritime jurisdiction now pending in the District Court of the United States for the Western District of Washington, Northern Division, wherein Pacific Creosoting Company, a corporation, is libel-

ant, against Thames & Mersey Marine Insurance Company, Ltd., respondent, on behalf of said respondent, in accordance with the stipulation hereto annexed:

Cross-interrogatory No. 1: Did one Frank Walker make a survey of the cargo of creosote on board the "Sardhana" to determine how much creosote was lost?

Cross-interrogatory No. 2: Who employed him to make such survey?

Cross-interrogatory No. 3: State in detail how he ascertained the amount of creosote lost. [128]

Cross-interrogatory No. 4: Upon how much creosote did the Pacific Creosoting Company pay freight to the owners of the "Sardhana"?

Cross-interrogatory No. 5: State upon exactly what data you base your estimate of the amount of creosote lost.

Cross-interrogatory No. 6: If in answer to the last cross-interrogatory you say that said data includes certain documents, please produce such documents, state when and by whom each one was made and attach the same to your deposition.

Cross-interrogatory No. 7: State in detail the nature of the examination which you personally made to ascertain the condition of the "Sardhana's" cargo and the amount of creosote lost.

Cross-interrogatory No. 8: Do you know from personal observation or measurement how much creosote had escaped from the drums and was awash in the hold of the vessel upon her arrival at Eagle Harbor?

Cross-interrogatory No. 9: Do you know from personal knowledge what was done with said creosote that was so awash in the hold of the vessel? If so, state in detail what was done with it.

Cross-interrogatory No. 10: Was not some of said creosote which was awash in the hold of the vessel pumped or baled into barrels and/or other receptacles provided by the Pacific Creosoting Company and, if so, how many barrels and/or other receptacles were so provided, and how much creosote was so pumped or baled into them? [129]

Cross-interrogatory No. 11: Was Mr. Walker informed as to the amount of creosote so saved that had been awash in the hold of the "Sardhana"?

Cross-interrogatory No. 12: Do you know of your own personal knowledge as distinguished from hearsay how long it took to put out the fire which occurred on the "Sardhana" on November 18, 1908, or the means used in extinguishing it? If so, state from such personal knowledge how long the fire burned and the means used in its extinguishment. Please give only facts known to you personally in answering the above.

Cross-interrogatory No. 13: Was any creosote burned in said fire?

Cross-interrogatory No. 14: If the creosote was stowed near the bulkhead where said fire occurred, how can you explain the fact that it did not take fire?

Cross-interrogatory No. 15: State from your personal knowledge and not from hearsay whether the crews of the "Jupiter" and "Hornelin" did any

work in the actual extinguishment of the fire and, if so, state just what you know from personal observation said work consisted of.

Cross-interrogatory No. 16: Do you know from personal knowledge whether the entire bulkhead forward of the lazarette was burned in said fire and, if you know it was not entirely burned, state if you can from personal knowledge how much of it was burned. [130]

Cross-interrogatory No. 17: Do you know from personal knowledge whether the entire door of said bulkhead was burned in said fire and, if you know it was not entirely burned, state if you can from personal knowledge how much of it was burned.

Cross-interrogatory No. 18: Do you know from personal knowledge if there was any dunnage burned in said fire and, if your answer is in the affirmative, state if you can from personal knowledge how much was burned and where said dunnage which was burned was located.

Cross-interrogatory No. 19: Do you know from personal knowledge if the floors and ceilings of the ship near said bulkhead were burned and, if so, state from your personal knowledge the extent to which the floor and/or ceiling was burned.

Cross-interrogatory No. 20: Do you know from personal knowledge as distinguished from hearsay that repairs were made on the "Sardhana" as a consequence of said fire? If so, state from such personal knowledge and in detail the location and extent of any such repairs, at whose order they were made and by whom they were made.

Cross-interrogatory No. 21: State upon exactly what data you based your estimate as to the amount of creosote capsized on the lighter, the amount saved thereafter and the expenses incurred in saving the same.

Cross-interrogatory No. 22: If, in answer to the last cross-interrogatory, you state that said data includes certain documents, please [131] produce such documents, state when and by whom the same were made and attach the same to your deposition.

---

Proctors for Respondent. [132]

---

[Title of Court and Cause.]

**Deposition of E. D. Rood.**

ANSWERS OF WITNESS, E. D. ROOD, TO  
DIRECT AND CROSS INTERROGATO-  
RIES HERETO ATTACHED.

E. D. ROOD, a witness for libellant in the above-entitled cause, being first duly sworn to testify the truth, the whole truth and nothing but the truth relative to said cause, made answer to the said respective direct interrogatories and cross-interrogatories as follows:

Answering Direct Interrogatory 1, witness says:

My name is Edson Dudley Rood; age thirty-four years; residence, Los Angeles, California; no occupation.

Answering Direct Interrogatory 2, witness says:

Assistant Manager of the Pacific Creosoting Company.

(Deposition of E. D. Rood.)

Answering Direct Interrogatory 3, witness says:

About a year and a half before November, 1908, and up to April 1909, afterwards.

Answering Direct Interrogatory 4, witness says:

I was.

Answering Direct Interrogatory 5, witness says:

I went on board the vessel the day after she arrived for the first time, and was on board a number of times afterwards. I do not remember exactly how many.

Answering Direct Interrogatory 6, witness says:

I saw the cargo before same was discharged and at different times while it was being discharged.

Answering Direct Interrogatory 7, witness says:

The first time I looked at the cargo we went down into No. 1 hatch before the cargo was broken loose. It appeared to be well stowed and in fairly good condition. As I saw the cargo at different times while it was being discharged I observed a number of damaged drums.

Answering Direct Interrogatory 8, witness says:

To the best of my recollection there were about seven hundred and fifty or eight hundred damaged drums. These were dented on the ends; the chimes were badly bent; some of them had holes in them—in the sides, and they were all leaky, and a number were empty. [133]

Answering Direct Interrogatory 9, witness says:

To the best of my knowledge and belief some of the cargo was in the bottom of the hold.

Answering Direct Interrogatory 10, witness says:

(Deposition of E. D. Rood.)

It was not all delivered. My recollection is that about fifty thousand or sixty thousand gallons were short.

Answering Direct Interrogatory 11, witness says:

I did.

Answering Direct Interrogatory 12, witness says:

I was on board at the time of the fire from the time the alarm was turned in until the fire was extinguished.

Answering Direct Interrogatory 13, witness says:

My first knowledge of the fire was when the alarm was turned in. I got aboard as quickly as I could and found a large number of men aboard working on the fire with chemical fire extinguishers. A large quantity of smoke was coming out of the lazarette into the cabin. This was quite stifling, and as there were men down in there handling extinguishers, I did not go down into the lazarette to see the fire myself, but stayed on deck and helped pass fire-extinguishers and water down below. I do not know the extent of damage, nor I do not know the nature or amount of damage done. The fire appeared to be quite stubborn, and a great deal of difficulty was found in putting it out. To my best recollection from the time the fire alarm was turned in until the fire was put out was about an hour.

Answering Direct Interrogatory 14, witness says:

Well, I was not down there, so I do not know whether there was any cargo stowed between-decks at the time of the fire or not, nor do I know what stores were in the lazarette.



(Deposition of E. D. Rood.)

Answering Direct Interrogatory 15, witness says:

The dunnage in between-decks was covered with creosote from the leaky drums. This made it more inflammable.

Answering Direct Interrogatory 16, witness says:

I do not know of any repairs.

Answering Direct Interrogatory 17, witness says:

There was a lighter of drums of creosote alongside the vessel that capsized on November 21, 1908. This lighter was capsized on account of the unusually heavy weather at this time. The seas and swells rolled in and it was impossible for the lighter to weather the storm. My recollection is that there were about two hundred and sixty drums aboard the scow or lighter when it capsized. These drums sank to the bottom. [134]

Answering Direct Interrogatory 18, witness says:

As soon as it was learned that the scow of drums had capsized, the launch "Pacific," owned by the Pacific Creosoting Company, was set to work and recovered about fifteen drums on the beach opposite the plant of said company. These floated to the beach because they were light being empty or only partially filled with creosote. About two hundred and fifty drums, from my best recollection, were recovered by a diver named Finch. There were four drums that were not recovered at all. The expense incurred in recovering these drums was made up as follows: The use of the launch "Pacific" and men of the Pacific Creosoting Company for about three hours time; contract with the diver, Finch, at four

(Deposition of E. D. Rood.)

dollars per drum for each drum recovered; the use of the scow at ten dollars per day, upon which were placed the drums recovered by Finch; delivering the scow from Eagle Harbor; the use of the pile driver grappling the drums recovered by Finch and placing them on the scow. I do not remember the different amount of these charges.

Answering Direct Interrogatory 19, witness says:

I remember nothing further.

**ANSWERS TO CROSS-INTERROGATORIES:**

Answering Cross-interrogatory 1, witness says:

Mr. Frank Walker made a survey of the cargo of the "Sardhana" to determine the loss and condition of the cargo.

Answering Cross-interrogatory 2, witness says:

I did.

Answering Cross-interrogatory 3, witness says:

I do not know how he ascertained the amount of creosote lost.

Answering Cross-interrogatory 4, witness says:

I do not remember.

Answering Cross-interrogatory 5, witness says:

At the time this loss was estimated I looked over the damaged drums myself, and was given figures by employees of the Pacific Creosoting Company showing the amount of creosote dumped from the damaged drums and the shortage. These figures were made up by the men who dumped the drums, and were made at the same time the drums were emptied.

Answering Cross-interrogatory 6, witness says:

(Deposition of E. D. Rood.)

My estimate is from personal recollection from the data given me at that time. I have no data with me now, or in my possession.

Answering Cross-interrogatory 7, witness says:

My first examination of the cargo was through No. 1 hatch before same was broken loose and before they had commenced to discharge. I examined the cargo at different times thereafter as it was brought ashore on the scows and rolled off on to the landing of the Pacific Creosoting Company. I saw some of the damaged drums dumped, and I know there was a loss because they were only partially filled. The loss determined by employees of the Pacific Creosoting Company measuring the creosote which was dumped from the damaged drums into a receptacle with a capacity for a fixed quantity of creosote.

Answering Cross-interrogatory 8, witness says:

I do not know that there was any creosote awash in the hold of the vessel. [135]

Answering Cross-interrogatory 9, witness says:

As I stated in answer to cross-interrogatory 8, I do not know of any creosote awash in the hold of the vessel.

Answering Cross-interrogatory 10, witness says:

I know of no such circumstance.

Answering Cross-interrogatory 11, witness says:

I do not know.

Answering Cross-interrogatory 12, witness says:

From the time the alarm was turned in until the fire was put out I recollect was about an hour. The means used in extinguishing the fire were chemical

(Deposition of E. D. Rood.)

extinguishers and water.

Answering Cross-interrogatory 13, witness says:

No.

Answering Cross-interrogatory 14, witness says:

I do not know that the creosote was stowed near the bulkhead at the time of the fire.

Answering Cross-interrogatory 15, witness says:

I saw men aboard the "Sardhana" working to put out the fire whom I recognized as belonging to the crews of the "Jupiter" and "Hornelin." They were passing extinguishers and working with the rest of us to put out the fire.

Answering Cross-interrogatory 16, witness says:

I did not see the bulkhead forward of the lazarette after the fire.

Answering Cross-interrogatory 17, witness says:

I did not see it.

Answering Cross-interrogatory 18, witness says:

I was not down in between-decks at the time of the fire, so did not see any dunnage burning.

Answering Cross-interrogatory 19, witness says:

No, I do not know whether they were burned or not.

Answering Cross-interrogatory 20, witness says:

I have no knowledge of the facts called for in that question or anything about it.

Answering Cross-interrogatory 21, witness says:

I base my estimate of the amount of creosote on the lighter upon personal recollection from data that I saw at the time of the loss. This data was prepared by the men who checked the loading of the

(Deposition of E. D. Rood.)

lighter. The amount saved thereafter I estimate from recollection of having made the contract with the diver and paid his bill for the work, and other minor charges that came up with rescuing the cargo, the bills for which I paid at the time, but I do not recall what amounts they were.

Answering Cross-interrogatory 22, witness says:

I have no documents or data. My estimate is from personal recollection.

[Seal]

E. D. ROOD.

Subscribed and sworn to before me this 19th day of July, A. D. 1911.

O. P. LOCKHART,

Notary Public in and for the State of California,  
Residing at Los Angeles. [136]

[Indorsed]: Deposition of E. D. Rood. Taken at Los Angeles, Cal., July 17, 1911, Before O. P. Lockhart, Notary Public, Pursuant to Stipulation There-to Attached. Filed in the U. S. District Court, Western Dist. of Washington. July 24, 1911. R. M. Hopkins, Clerk. [138]

---

[Deposition of George H. Wylie.]

[Title of Court and Cause.]

The deposition of GEORGE H. WYLIE, taken on the 28th day of June, A. D. 1911, at the Chambers of J. Burke Hendry, the Commissioner, 7 New Square, Lincoln's Inn, London, W. C., County of Middlesex, United Kingdom of Great Britain and Ireland, and to be read as evidence in behalf of the

(Deposition of George H. Wylie.)

respondent in the above-entitled action pending in the District Court of the United States, Western District of Washington, Northern Division.

Percival C. Hollis of 36 Jersey Road, Ilford, a stenographer and disinterested person, is appointed by the Commissioner to take down the deposition in shorthand, he being duly sworn to take correct notes of the deposition in shorthand and make a faithful transcript thereof into typewriting.

GEORGE H. WYLIE, of 43 Eaton Terrace, London, S. W., a certificated master mariner, aged 27 years and upwards, being duly and publicly sworn pursuant to the directions hereunto annexed, and examined on the part of the respondent, doth depose and say as follows:

1st Interrogatory: State your name, age, residence and occupation.

Answer: George Henry Wylie; aged 27; residence 43 Eaton Terrace, London, S. W.; occupation Certificated Master Mariner.

2d Interrogatory: What was your occupation in the month of November, 1908?

Answer: First mate to the "Sardhana." [139]

3d Interrogatory: If your answer to the 2d Interrogatory is that you were mate of the British bark "Sardhana," state how long you had been such mate and how long you remained such after November, 1908.

Answer: I was mate of the "Sardhana" from the 4th April, 1908, to the 3d May, 1911.

4th Interrogatory: When were you last on board the

(Deposition of George H. Wylie.)

bark "Sardhana" and where was she at the time?

Answer: 3d May, 1911, at Dunkirk.

5th Interrogatory: Where was said bark on November 18, 1908, and were you then on board of said bark?

Answer: Eagle Harbor, Washington; I was on board for the greater part of the day—all the day except a few minutes.

6th Interrogatory: Did anything unusual happen on said bark on said day, and, if so, what was it?

Answer: A fire broke out in the after 'tween-decks.

7th Interrogatory: If your answer to the 6th Interrogatory is that there was a fire on board said bark on said day, state in detail the nature and extent of said fire, the parts of the ship damaged by it and the nature and amount of said damage.

Answer: The extent of the fire was very slight; no part of the ship was damaged to any extent. The parts were, the door of the lazarette bulkhead was affected by the fire, that is, it was scorched and a small portion was slightly more than scorched, perhaps slightly charred by the flames. There was no damage to the bulkhead bar, a very slight blistering of a small portion of the paint.

8th Interrogatory: State in detail the means used and the length of time it took to extinguish said fire.

Answer: The means used were half a dozen buckets of water; the time was less than five minutes.

(Deposition of George H. Wylie.)

9th Interrogatory: In the work of actually extinguishing said fire, was any outside assistance rendered?

Answer: No, the outside assistance arrived after the fire was extinguished.

10th Interrogatory: Was a survey held on account of said fire?

Answer: No.

11th Interrogatory: Were any repairs made to your ship on account of said fire?

Answer: No.

12th Interrogatory: Were any repairs made necessary thereby?

Answer: No.

13th Interrogatory: If your answer to the 11th Interrogatory is that no repairs were made on account of said fire, state, if you know, what would have been the approximate cost of such repairs if they had been made.

Answer: All the repairs that were rendered necessary were simply a rub with a paint brush; the approximate cost would be 1d. or 2d.—the cost of a brush full of paint.

14th Interrogatory: If in answer to the 7th Interrogatory you state that the door of the wooden bulkhead separating the lazarette from the after 'tween-decks was damaged by said fire, state whether you can identify said door at the present time.

Answer: Yes, I can.

15th Interrogatory: If your answer to the 14th In-



(Deposition of George H. Wylie.)

terrogatory is in the affirmative, please state whether or not the door now before the Commissioner and introduced as a part of the deposition of Alexander Wallace is said door.

Answer: It is the said door, and is branded in 7 places with the word "Sardhana." This branding was done by me on the date of the [141] shipment of the door from Dunkirk, which was at the end of April, 1911, at which time I detached the door from the bulkhead of the "Sardhana."

DOOR PRODUCED TO WITNESS; IDENTIFIED BY HIM; MARKED "EXHIBIT G. H. W. 1"; SIGNED BY WITNESS AND COMMISSIONER AND FORMALLY PUT IN EVIDENCE.

16th Interrogatory: If your answer to the 15th Interrogatory is in the affirmative, please state whether said door at this time is in the exact condition as it was immediately after said fire. If not, state what is the difference in condition.

Answer: There is no difference; it is in exactly the same condition.

17th Interrogatory: The Pacific Creosoting Company, libelant in this case, has been asked certain questions in regard to the nature and extent of the fire on board the "Sardhana," to which you have testified, and in answering one of the interrogatories propounded to it, said libelant says that the floors and ceiling of the "Sardhana," near the bulkhead, were burnt by the said

(Deposition of George H. Wylie.)

fire. Is that statement true or false?

Answer: False.

18th Interrogatory: Further answering another interrogatory propounded to it with reference to said fire, said libelant says that two-thirds of the said bulkhead were burnt and charred by the said fire. Is that statement true or false?

Answer: That is also false.

19th Interrogatory: Further answering another interrogatory propounded to it with reference to said fire said libelant says that the damage caused to the "Sardhana" by said fire was such as to require repairs, and that the repairs were made by the ship's carpenter and consisted of removing the burnt bulkhead and building a new one in its place. Is that statement true or false?

Answer: Absolutely false.

20th Interrogatory: Further answering another interrogatory propounded to it with reference to the difficulties encountered in extinguishing the fire, libelant says: "That the difficulties encountered in extinguishing the fire were that stores were [142] piled on one side of the bulkhead and drums of creosote, dunnage, etc., on the other, and that the lumber was saturated with creosote making the same very inflammable, and that it required hard work on the part of the crew of the 'Sardhana' and the persons so assisting them to extinguish the fire." Is this statement with reference to the difficulties en-

(Deposition of George H. Wylie.)

countered in extinguishing the said fire true or false?

Answer: The difficulties encountered in extinguishing the fire were the difficulties that a man encounters in trying to walk over barrels, some full, some empty and some half full, and cases of various other stores that were piled in the way. The difficulty was really to approach the fire, not to actually put it out. Once it was approached, it was extinguished in a few minutes.

21st Interrogatory: What cargo was the "Sardhana" carrying in November, 1908?

Answer: Creosote in drums.

22d Interrogatory: Where was said cargo stowed on said vessel?

Answer: In the hold and 'tween-decks.

23d Interrogatory: Where was said cargo being carried to, and to whom was it consigned?

Answer: It was being carried to Eagle Harbour, Washington, and it was consigned to the Pacific Creosoting Company.

24th Interrogatory: Was said cargo, or any part thereof, lost during the voyage to the port of Eagle Harbor, and, if so, state the details of how such loss occurred and the amount of such loss.

Answer: There was no loss.

25th Interrogatory: If in answer to the 27th Interrogatory you say, *inter alia*, that there was a leakage of certain creosote in drums on board said bark, state in what part of the ship said leakage took place. [143]

(Deposition of George H. Wylie.)

Answer: I have not yet answered the 27th Interrogatory. When I have heard that interrogatory I will answer the 25th and 27th interrogatories together.

26th Interrogatory: What, if anything, was done with the creosote which had leaked out of the drums? Give full details.

Answer: The creosote which had leaked out of the drums remained in the ship until it was pumped out by the ship's pump through the hose purchased for the purpose into empty barrels supplied by the Pacific Creosoting Company. We pumped down to 3 or 4 inches, until the pumps refused to draw any more, and the remainder was baled out and passed up in buckets, etc., and poured into the empty barrels. They got every drop it was possible to bail out, and then, of course, we had to wash out. That is all the creosote that was lost.

27th Interrogatory: State, if you can, approximately how much of said creosote which so leaked out of the drums was lost.

Answer: Nothing; but what we could wash out of the limbers. It is really as much as you could wash off the sides of a cement lined chamber,—infinitesimal.

28th Interrogatory: Did the Pacific Creosoting Company have anything to do with the creosote that had leaked from the drums into the ship's hold? If so, give details.

Answer: I have already given the details in my an-

(Deposition of George H. Wylie.)

swer to Interrogatory 26th. They received it as set forth fully therein.

29th Interrogatory: Did the master of the "Sardhana" cause the ship and cargo to be surveyed in the said month of November, 1908?

Answer: No other survey than the ordinary one of hatches at the termination of the voyage.

30th Interrogatory: If it should be said that as a result of a survey, or at all, 741 drums or creosote carried on board your ship [144] on said voyage were found damaged or worthless, and that 56,267 gallons of creosote were found to have been lost, what have you to say as to the truth or falsity of such statements?

Answer: The number I cannot state, but the number of damaged drums certainly did not amount to anything like 741; the statement that 56,267 gallons of creosote were lost is absolutely false.

31st Interrogatory: If your answer to the 30th Interrogatory is that such statements are false, please state in detail your reason for so testifying.

Answer: As to the damaged drums there was a United States Custom-house Officer on board tallying the drums for the customs dues; I tallied the drums for the ship, and a tally clerk for the Pacific Creosoting Company. Any drum that was damaged, even to the extent of being slightly dented, he called damaged. The drums I and the Custom-house Officer termed damaged were drums that were holed or so badly dented as to

(Deposition of George H. Wylie.)

be unfit to carry liquids in future, and those did not amount to anything like that number of 741. The exact number I cannot say even approximately now. As to the loss of fifty-six thousand odd gallons, that is absolutely false. My reason for stating that there were not fifty-six thousand odd gallons of creosote lost is that I was on board the ship the whole time, and I know the creosote was loaded in the ship in London and was delivered in Eagle Harbor to the last drop, bar what we washed off the limbers. No creosote could have gone over the side without my knowledge. There was no water in the ship, nor any leakage of the ship. The creosote that leaked went into the limbers of the ship and could not possibly get out of the ship. There was 13 inches of creosote in the well on arrival in Eagle Harbour. That remained until pumped out as before stated. [145]

32d Interrogatory: Do you know, or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If so, set forth the same fully and at large in your answer.

Answer: I can state that to my knowledge Captain Wallace, at that time Master of the "Sardhana," wrote to the owners of the ship on November 23d, 1908, that the fire was of a very trivial nature, in

(Deposition of George H. Wylie.)

the following words: "However, we managed to get it extinguished before any damage was done to the ship." I will hand in as evidence a letter written by Captain Alexander Wallace in Dunkirk on April 19th and 20th, 1911, to Messrs. Andrew Weir & Co., which was also signed by me. This will avoid repetition and the reading of the contents of the letter, as all I could say in addition is contained in that letter.

LETTER PRODUCED BY WITNESS;  
MARKED "EXHIBIT G. H. W. 2"; SIGNED  
BY WITNESS AND COMMISSIONER AND  
FORMALLY PUT IN EVIDENCE.

Cross-interrogatory No. 1: Did you not join with Alexander Wallace, then master of the bark "Sardhana," in an extended protest on December 28, 1908?

Answer: Yes, I did.

Cross-interrogatory No. 2: Did not three seamen of said bark also join with you and said Master in said extended protest?

Answer: Yes, they did.

Cross-interrogatory No. 3: Did you not swear to such protest at Mukilteo, State of Washington, before one Wm. W. Olwell, a Notary Public?

Answer: Yes. [146]

Cross-interrogatory No. 4: Did not such protest contain true copies of entries in the log-book of said bark "Sardhana"?

Answer: Yes, it did.

Cross-interrogatory No. 5: Were not such entries in

(Deposition of George H. Wylie.)

said log-book and such statements in said protest, true as made?

Answer: Yes, they were.

Cross-interrogatory No. 6: Did not such protest contain the following statement: "Nov. 18th: Stevedores continued to discharge the cargo and at 5:00 P. M. finished for the day. 291 further drums were discharged. About 9:30 P. M. smoke was discovered issuing from the after-hatch, by one of the crew, who immediately notified the master and then gave the alarm. This alarm was responded to by the crews of the ship 'Jupiter,' the S. S. 'Hornelen' and the employees of the Pacific Creosoting Company who brought with them several chemical fire-extinguishers. The master went below through the lazarette and saw the reflection of the fire over the top of the bulkhead between the after 'tween-decks and the lazarette. The after 'tween-decks were still full of cargo. After considerable trouble the fire was extinguished and it was then discovered that the aforesaid bulkhead, together with the door thereof (the bulkhead was built in the vessel) and the dunnage in the after 'tween-decks were burned, and some of the ship's stores in the lazarette were damaged by water and chemicals. The origin of the fire was not discovered."

Answer: The protest contained that statement.

Cross-interrogatory No. 7: If any of your answers to the foregoing cross-interrogatories or to the di-



(Deposition of George H. Wylie.)

rect interrogatories propounded to you by respondent herein, are inconsistent or different from the statements in said protest, do you now mean to have the Court understand that you swore falsely to said protest?

Answer: No, but I think I might explain one statement of that protest. [147] It states there that the captain saw the reflection of the flames over the top of the bulkhead. That is an impossibility. The bulkhead extended up to the upper deck. Where the captain saw the reflection of the flames was through ventilation holes cut into the bulkhead. That is the only part of the statement with which I can find fault. The ventilation holes were a few inches from the top of the bulkhead. By the word "burned" in that protest I mean "scorched" or to a slight extent affected by fire.

Cross-interrogatory No. 8: On the evening of November 18, 1908, didn't you go to the home of M. I. Helman, Chief Engineer of the Pacific Creosoting Company's plant at Eagle Harbor?

Answer: Yes.

Cross-interrogatory No. 9: While you were so at the home of said Helman, did you not hear a fire-alarm from aboard the "Sardhana"?

Answer: Yes.

Cross-interrogatory 10: Did not you, together with others then present at said place, go immediately to the said ship?

Answer: No, I did not go with others; they stopped

(Deposition of George H. Wylie.)

to do something. I immediately went up myself. I was aboard the ship in less than 5 minutes from the time the alarm bell was rung. I did not stop to do anything. I took myself off in a boat.

Cross-interrogatory 11: Didn't you and others procure fire-extinguishers from the said plant and take them to said ship, for the purpose of using the same for extinguishing the fire on board said ship?

Answer: I did not; others did. I made my way direct on board.

Cross-interrogatory No. 12: Didn't you then find smoke issuing from the after-cabin and after-hold of said ship?

Answer: Yes, to a certain extent there was smoke issuing, but the smoke was not dense. As a matter of fact I went on board [148] the ship and went immediately down below and was down  $\frac{3}{4}$  of an hour without going up so the smoke was not dense, not so dense as to prevent me from staying down for  $\frac{3}{4}$  of an hour. Of course, there was smoke, but not to any extent.

Cross-interrogatory No. 13: Did not members of the crew of the steamship "Hornelen" lying near, also respond to said fire-alarm?

Answer: Yes, they answered the fire-bell and came.

Cross-interrogatory No. 14: Did not members of the crew of the ship "Jupiter" lying near, also respond to said fire-alarm?

Answer: The crews of both ships responded to the

(Deposition of George H. Wylie.)

fire-alarm but before their arrival the fire was out.

Cross-interrogatory No. 15: Is it not true that the after 'tween-decks near the bulkhead, where said fire started, were then full or partly full of cargo?

Answer: Partly full.

Cross-interrogatory No. 16: Is it not true that the lazarette of said ship near said bulkhead, then contained ship's stores?

Answer: Quite true.

Cross-interrogatory No. 17: Is it not true that the dunnage and lumber in the after 'tween-decks near said bulkhead, were more or less covered with creosote?

Answer: Yes.

Cross-interrogatory No. 18: Is it not true that more or less difficulty was encountered in extinguishing said fire?

Answer: The difficulty encountered was not in extinguishing the fire but in approaching the fire as I have already described.

Cross-interrogatory No. 19: When was your attention for the first time called to the matter of said fire, after you made said protest?

Answer: In April, 1911, at Dunkirk. I refer to the letter I have produced "Exhibit G. H. W. 2," in reply to Interrogatory 32. [149]

Cross-interrogatory No. 20: How often and when has your attention been called to the matter of said fire since said time, and by whom; and how often

(Deposition of George H. Wylie.)

have you *through* of said matter since said time?

Answer: Until that date, the 19th of April, 1911, my attention had never been called to the fire at all since extending the protest, and not since that date until yesterday, the 27th June, 1911, when arrangements were made with me for this examination by the representatives of the Thames and Mersey Marine Insurance Company, Limited. I have practically never thought of it excepting yesterday and the day in question in April.

Cross-interrogatory No. 21: If you now testify differently from the said protest, who suggested such change in your testimony, and when was such suggestion made?

Answer: I do not testify differently, bar explaining one clause that I think is not very fully explained.

Cross-interrogatory No. 22: Were not the following statements made in your protest:

“1908.

May 30th: This vessel sailed from London with a cargo of creosote in iron drums bound for Eagle Harbor.

Nothing to be noted here occurred until

June 6th: When it was discovered that the carpenter's sounding rod was very *slight* colored with creosote.

July 11th: The crew were employed placing extra chocks amongst the cargo.

(Deposition of George H. Wylie.)

July 29th: The gale continued as before; likewise the sea. The vessel again rolled heavily and pitched badly. Later the squalls blew with hurricane force. The ship rolled and pitched badly in a high confused sea and much water was shipped on deck. Towards night it was discovered that the cargo in the hold had commenced to work. The crew entered the hold from the lazarette and secured it as well as possible.

July 30th: The gale still continued. The ship rolled and pitched heavily and took much water on deck fore and aft. The cargo worked as before and the crew again entered the hold to secure it.

July 31st: The gale moderated the first part of the day but increased again later. Much water was shipped on deck. The cargo worked as before and the crew entered the hold through the ventilator hatch and secured it as well as possible. [150]

Aug. 1st: A fresh gale was experienced and the ship rolled and pitched heavily in a high beam sea. Again the cargo worked.

Aug. 7th: The crew were employed securing the cargo.

Aug. 25th: A hard gale was encountered accompanied by a heavy sea. Much water

(Deposition of George H. Wylie.)

was shipped on deck. The cargo worked again badly.

Aug. 26th: Similar conditions were experienced.

Aug. 31st: A moderate gale was experienced. The decks were frequently awash and the cabin and deck-houses were flooded. The cargo worked heavily.

Sept. 1st: A moderate gale with hard squalls was experienced. The vessel shipped large quantities of water over all. The cargo worked heavily.

Sept. 2nd: Similar conditions were encountered.

Sept. 4th: A strong gale was experienced accompanied by a high sea in which the vessel labored and strained badly. The cargo worked as before. The hold was entered through the main ventilator and the drums were found to be adrift and were rolling about in all directions. It was impossible to secure the cargo until the weather moderated.

Sept. 14th: The crew were employed cutting up spare spars and blocking off the cargo with them.

Sept. 28th: It was noticed by the soundings in the pump well that there was an increase of liquid which appeared to be mostly creosote.

Nov. 3rd: Similar conditions were encountered and the cargo again worked badly.

Nov. 17th: Stevedores commenced to discharge the

(Deposition of George H. Wylie.)

cargo and they discharged 136  
drums.”

Answer: Yes.

Cross-interrogatory No. 23: Is it not a fact that you had extremely severe weather on the said voyage from London to Eagle Harbor?

Answer: We had extremely severe weather but we had no worse weather than is quite usual off Cape Horn or off Cape Flattery, Washington; we expect bad weather off both places. Flattery is not a nice place in the winter time.

Cross-interrogatory No. 24: Is it not a fact that the cargo of drums worked on said voyage, and that some of said drums were damaged?

Answer: That is a fact. [151]

Cross-interrogatory No. 25: In giving your testimony as to the number of the damaged drums of the said cargo, did you not mean such drums as were so damaged as to be a detriment to the contents?

Answer: The drums were not damaged to the detriment of the contents because the contents ran into the limbers of the ship and were afterwards pumped out into barrels as per my previous answer.

Cross-interrogatory No. 26: Did not some of the creosote of said cargo escape into the hold of said vessel, because of the very severe weather encountered on the said voyage?

Answer: The creosote escaped into the hold of the vessel partly on account of the severe weather

(Deposition of George H. Wylie.)

and partly on account of the original weakness of the drums, and the leakage of creosote was to some extent due to the screw bungs working out.

Cross-interrogatory No. 27: Was not some of said cargo of creosote lost because of such severe weather?

Answer: None was lost; it remained in the ship.

Cross-interrogatory No. 28: Was not said bark "Sardhana" in your opinion, seaworthy and properly manned, equipped and provisioned in all respects, when she left London on said voyage, for the said voyage?

Answer: She was.

Cross-interrogatory No. 29: Was not said cargo, in your opinion, then properly stowed for the voyage you were then about to make?

Answer: It was properly stowed.

Cross-interrogatory No. 30: Was not all damage to and loss of drums and/or creosote of said cargo, except the loss from the barge or lighter in the bay at Eagle Harbor, due to the severe weather encountered on said voyage?

Answer: There was no loss of drums or creosote; the damage done to the drums was partly on account of the severe weather and partly [152] on account of the original weakness of the drums. The leakage of creosote was to some extent due to the screw bungs working out as well as to the weakness of the drums and the severe weather.



(Deposition of George H. Wylie.)

Cross-interrogatory No. 31: Was not all of said cargo in apparent good order and condition when received on said ship?

Answer: It was.

(Signed) GEORGE HENRY WYLIE,  
Witness. [153]

[Exhibit G. H. W. No. 2.]

Bk. Sardhana,  
Dunkirk, April 19th, 1911.

Messrs. Andrew Weir & Co.,  
6 Lloyds Avenue,  
London.

Dear Sirs:

In reply to your verbal inquiries I beg to give the following details with regard to the fire on the Sardhana at Eagle Harbor, Puget Sound, Nov. 18th, 1908.

I was in command of the vessel at the time and on board when the fire occurred, my mate Mr. Wylie was on shore but arrived very shortly afterwards and is fully acquainted with all the conditions and with the facts. The fire was from first to last of a very trivial nature though of course, with an inflammable cargo like creosote there were possibilities of a serious extension. Fortunately, the fire was extinguished in about three minutes by some six buckets of water being thrown down. The damage to the ship was confined to a one inch sliding door of the wooden bulkhead separating the Lazarette from the Hold, and which for about four feet in height and two feet five inches in width was licked by the flames,

scorching the paint, and to a very slight extent here and there a little more than scorched or slightly charred the wood, there was no real damage to the bulkhead consequently no survey was held and no repairs of any kind have been done to the door, which remains at the present time precisely as it was after the fire in November, 1908. The entry in the Log-Book referring to the fire being extinguished with considerable difficulty, meant that owing to the position of the fire, it having to be approached through the Lazerette which was full of stores, all the floor space being occupied, and therefore difficult to pass, and still more so in a hurry, and to the smoke, it was not easy to get at it, but when this [155] was done the fire was promptly put out. The chemical fire-extinguishers were used as a further measure of precaution; the crew of a neighboring ship quite close came on board to render assistance, but all danger was over before they arrived, the fire was so very trifling that I have attached little or no importance to it. The stores were damaged by water and chemicals and a few pieces of dunnage wood were scorched like the door, they were not badly burnt.

The Protest was extended at the request of and at the expense of the Pacific Creosoting Coy. There was no claim for salvage of any kind.

I shall be prepared to give evidence if required in confirmation of what I have stated above.

I am, Dear sirs,

Yours very truly,

ALEXANDER WALLACE,

Mate Bk. "Sardhana."

I concur in the above statement :

GEORGE H. WYLIE,

Mate Bk. "Sardhana."

P. S. Since writing the above, my attention has been called to the following points. It is absolutely incorrect to state that damage was caused by the fire to other parts of the vessel than the bulkhead door, nor was a considerable part of the dunnage burnt, but only a very few pieces of loose wood scorched or slightly charred.

As regards the origin of the fire, I have good reason to believe it to be as follows: The vessel has one clear hold, but with 'tween-deck beams about 7 feet below the main deck, on the beams are laid, round the sides, a deck of 4 or 5 feet wide on which cargo was stowed. The lazerette is entered through a hatch in the [156] Master's cabin and communicates with the hold by a sliding door made of one inch boards, in the wooden bulkhead and opens on the 'tween-deck. When the drums of creosote shifted at sea, the hold was entered through the sliding door and the drums chocked off, and the door remained open afterwards, it being jammed by the creosote drums. It is believed that some one or more of the crew on the 18th of November got down in the main hatch and over the cargo to the open door of the Lazerette with the intention of stealing stores from the Lazerette, but dropping a match on some burlap which had got into the hold from the Lazerette when chocking of the cargo, set fire to the burlap which is very inflammable, flares up quickly and gives off thick smoke, pieces of partially burnt bur-

lap were found where the fire occurred. Of course, if any part of the creosote had caught fire, the conflagration would have been very serious, and probably could not have been extinguished. The accounts of the fire in the newspapers at the time were absurdly exaggerated.

I am simply astounded to hear that it is claimed there was a loss of 56,264 gallons of creosote through leakage. The creosote when it leaked out of the drums was not lost or pumped overboard, but remained in the hold where there was no water or anything to damage the creosote. On arrival at Eagle Harbour, there were 13 inches of loose creosote in the limbers and this was pumped by the ship's pumps down to 3 or 4 inches into barrels provided by the Pacific Creosoting Company and so far as I know, was not damaged at all. The remainder of the loose creosote was baled into barrels and only a very small quantity was mopped up or put overboard. The loss must have been infinitesimal. I do not know what the ordinary leakage on creosote on a long voyage would be; at the time of the fire we had discharged 427 drums some of which were no doubt slightly damaged. The drums themselves, if undamaged, would have been bought by the Standard Oil Co'y as usual, for exporting [157] oil, but those that were dented were not of use to the Oil Co'y. It might be useful to ascertain from the Custom House how many drums were tallied by their office as damaged, and on which duty was consequently not paid.

The drums were 4 feet long and 2' 8" Diameter,

and made of sheet iron and were not very strong and probably to same extent leaked in consequence of their original weakness. Some were rejected in London as obviously unfit.

Freight was collected by the agents, and so far as I know, was paid in full on the intake weight.

ALEXANDER WALLACE,

April 20th, 1911.

I concur in the above statement.

GEORGE H. WYLIE,

Mate.

“Exhibit G. H. W. 2.” George Henry Wylie,  
Witness. Jno. Burke Hendry, Commissioner.  
[158]

---

[**Testimony.**]

[Title of Court and Cause.]

To the Honorable Judges of the Above-entitled  
Court:

On this 20th day of February, 1913, the libelant appeared by Mr. Lawrence Bogle, one of its proctors, and the respondent appeared by Mr. McClanahan, one of its proctors. Thereupon it was stipulated that the testimony of the parties be taken before me at this time, the same as if an order of reference had been regularly entered in said cause.

LIBELANT'S TESTIMONY.

Mr. BOGLE.—It is stipulated that the policy produced at this time is the original policy of insurance referred to in the libel. And I now offer it in evidence.

Paper marked Libelant's Exhibit "A," filed and returned herewith.

[**Testimony of H. E. Stevens, for Libelant.**]

H. E. STEVENS, a witness called on behalf of the libelant being duly sworn, testified as follows:

Q. (Mr. BOGLE.) What is your business?

A. Now general manager of the Pacific Creosoting Company.

Q. How long have you been engaged in that business? A. Since 1907. [172\*—1†]

Q. Holding the same office?

A. No. Only since Mr. Rood's death last year. I have held various offices in the meantime.

Q. Where do you reside? A. Seattle.

Q. Were you connected with the Pacific Creosoting Company the libelant in this case, in November 1908? A. Yes, sir.

Q. In what capacity?

A. I guess I was bookkeeper or chief clerk, I don't just remember what it was, but at that time I was in the office.

Q. What office? A. In the general office.

Q. It is located where?

A. Located in the Bailey building at that time; now in the White building.

Q. Where is the plant of the Pacific Creosoting Company? A. At Eagle Harbor.

Q. Mr. Stevens, in your capacity as bookkeeper or chief clerk, did you have any knowledge of the pur-

\*Page-number appearing at foot of page of certified Apostles.

†Original page-number appearing at top of page of Testimony as same appears in Certified Apostles.

(Testimony of H. E. Stevens.)

chasing of creosote for that plant in England, to be shipped to this country? A. Yes, sir.

Q. Did you have any knowledge, or anything to do with the purchasing of the creosote which was shipped to this country on the British bark "Sardhana" in November, 1908?

A. We handled the transaction in the office at that time.

Q. Do you remember how many drums of creosote were shipped aboard the "Sardhana" consigned to the *Pacific Creosoting* [173—2]

A. I think 2753.

Q. From whom was that creosote purchased?

A. I believe from the Blagden-Wah company.

Q. Where are they located?

A. They have a London office.

Q. Do you remember about what time it was shipped from England?

A. In the early part of May, 1908.

Q. Mr. Stevens, I hand you this document and ask you what it is.

A. That is the bill of lading for the "Sardhana" cargo, the original bill of lading.

Q. Covering the cargo aboard the "Sardhana"?

A. Covering the cargo aboard the "Sardhana."

Mr. BOGLE.—I offer it in evidence.

Paper marked Libelant's Exhibit "B," filed and returned herewith.

Q. This Libelant's Exhibit "B" is endorsed by—

A. By the seller.

Q. And forwarded to you?

(Testimony of H. E. Stevens.)

A. And forwarded to us with the drafts.

Q. Mr. Stevens, do you know what the cost of this creosote was?

A. I do not recollect just the dollars and cents, but I know approximately what it was.

Q. Approximately what was it?

A. The cost of the cargo, something over thirty thousand dollars, the entire cargo.

Q. Does that include the freight?

A. That includes the freight. [174—3]

Q. Insurance? A. Delivered here.

Q. I hand you a document, Mr. Stevens, and ask you what it is.

A. That is a copy of the Consular invoice; British Consular invoice.

Q. Does that show the cost of the shipment of creosote? A. That shows the cost of the cargo.

Q. Is that the amount that you paid for the cargo?

A. I think it is very close to it. I think it is exactly the amount. We can verify it by the vouchers.

Q. Have you the vouchers with you?

A. Yes, sir.

Q. I wish you would verify it, unless counsel will admit it.

Mr. McCLANAHAN.—What is the materiality?

Mr. BOGLE.—I want to prove the value of the creosote—what they paid for it.

Mr. McCLANAHAN.—All right.

A. Seven thousand seven hundred pounds—something over \$35,000; a voucher for \$24,000; another



(Testimony of H. E. Stevens.)

for \$6,500 that would make \$31,000. \$508, \$1750, \$1175. Totaling up something like \$36,000 or \$37,000.

Q. In payment of this invoice?

A. In payment of this invoice and freight.

Mr. BOGLE.—If there is any dispute about that invoice, the cost of that, Mr. McClanahan, I will put in these vouchers.

I will offer in evidence this Consular invoice.

Mr. McCLANAHAN.—I object on the ground that it is hearsay; self-serving; incompetent and immaterial. And on the [175—4] further ground that it shows on its face to be a copy and has not been verified.

Q. Where is the original invoice?

A. Filed with the Custom-house here.

Paper marked Libelant's Exhibit "C," filed and returned herewith.

Mr. BOGLE.—Because of your last objection I will ask leave to withdraw this exhibit "C" and have it certified by the proper Custom-house officer.

Mr. McCLANAHAN.—I would like to have you do that. That would obviate a portion of my objections. But my objections will stand to the certified copy when it is produced with the exception that my objection as to it not being certified will be eliminated.

Q. Mr. Stevens, referring to exhibit "C," state exactly what that is.

A. That is a copy of the Consular invoice made before the American Consular office in London, sent to

(Testimony of H. E. Stevens.)

us with the goods, to turn over to the Custom-house here before the delivery of the goods are received, so that they may segregate, or charge duty on any particular item that is dutiable.

Q. How are the figures arrived at there, as the cost of drums, creosote, etc., who furnished these figures, if you know?

A. I do not know. The cost of drums is evidently what they pay for them over there. They buy the drums and simply put the receipt in there.

Mr. McCLANAHAN.—I object to that as simply an opinion. Unless you know, Mr. Stevens, do not offer your opinion. [176—5]

A. I do not know.

Q. Mr. Stevens, did you, or your company, pay for this creosote, upon the figures shown in this Consular invoice?

Mr. McCLANAHAN.—I object as immaterial.

A. Yes, sir.

Q. I hand you this document, Mr. Stevens, and ask you what that is.

A. A part of the cost of the creosote.

Q. That shows a payment of that amount by you on this shipment of creosote?

A. That is a part payment.

Mr. BOGLE.—I offer this paper in evidence.

Mr. McCLANAHAN.—I object as incompetent, irrelevant and immaterial; not the best evidence. And on the further ground that it contains statements which are not properly a part of the cost of said creosote material to this case.

(Testimony of H. E. Stevens.)

Paper marked Libelant's Exhibit "D," filed and returned herewith.

Q. Mr. Stevens, I hand you vouchers number 7857, 7785, 7790 and 8092, and ask you what these vouchers cover.

A. Cover payment of freight of the "Sardhana" cargo.

Q. Does that cover the payment of all the freight?

A. Yes, sir.

Q. Was any portion of this freight advanced before the cargo was shipped? A. One half of it.

Q. Does this cover all the freight or the balance of it? A. This covers all the freight.

Mr. BOGLE.—I offer these vouchers in evidence.

[177—6]

Papers marked Libelant's Exhibits "E," "E1," "E2" and "E3," filed and returned herewith.

Q. Examine voucher 7082 and state what that is.

A. Part of the cost of the freight on the cargo of creosote.

Mr. BOGLE.—I offer that in evidence.

Paper marked Libelant's Exhibit "F," filed and returned herewith.

Q. Mr. Stevens, Exhibits "D," "E" and "F" cover the entire amount paid by you for this shipment of creosote? A. That covers all; yes.

Q. Are there any items in these vouchers which are not shown upon the Consular invoice which has been introduced as exhibit "C"?

A. Yes, sir.

Q. I wish you would point out the items there

(Testimony of H. E. Stevens.)

which are not included in that invoice?

A. Interest on drafts while in transit, and commission charged in London, and banks commission, a quarter of one per cent on the draft.

Q. Then the balance of the payments on the vouchers is the price paid by you for the creosote, Mr. Stevens?

A. Yes, there is interest on this voucher 7082, exchange of a quarter of one per cent, bank interest.

Q. That is not included in the Consular invoice?

A. No, sir.

Q. With the exception of these items, the balance of the vouchers show what you paid for this creosote. A. Yes, sir.

Q. State if you know when the freight was paid upon this [178—7] shipment of creosote.

A. One-half of it was paid in London; the other half paid at several times while the cargo was being discharged here.

Q. Mr. Stevens, state if you know whether any claim was made against the ship for shortage, short delivery of this shipment.

A. We protested against payment of freight but the charter party was made out and the number of drums being delivered, that we were to pay on the number of drums delivered. We were compelled to pay the freight.

Q. Who were the agents of the owners?

A. Frank Waterhouse & Company, Seattle.

Q. Mr. Stevens, I hand you these bills, and ask you to state what they cover.

(Testimony of H. E. Stevens.)

A. Bill of Henry Finch of \$1012 is for recovery of drums of creosote in the bottom of the bay.

Mr. BOGLE.—I offer that bill in evidence.

Paper marked Libelant's Exhibit "G," filed and returned herewith.

Q. State if you know the circumstances in connection with that bill. Why was it necessary to employ this expense to recover these drums of creosote?

A. A scow while alongside the ship capsized and the drums sank?

Q. Do you know, of your own knowledge, how many drums were thrown off the scow into the bay?

A. No, sir.

Q. Do you know how many drums were recovered by Mr. Finch? A. 253. [179—8]

Q. Do you know who employed Mr. Finch to do this work? A. I think Mr. H. R. Rood did.

Q. Do you know whether survey was called and made after the capsizing of this scow, and if so, who made the survey?

A. Frank Walker made the survey.

Mr. McCLANAHAN.—Let me interrupt you right here. We had some sort of an understanding about that Finch bill. Let us have it clear. I do not object to it now, because of that understanding.

Mr. BOGLE.—That is what I do not know just exactly what our understanding was about it. What we wanted to arrive at was the number of drums which were capsized from this scow, and the number of drums recovered by Finch, and that the amount paid him was a reasonable amount for the work done.

(Testimony of H. E. Stevens.)

Mr. McCLANAHAN.—I will agree to all that. It is a little broader than the statement yesterday. This is simply to obviate the calling of Mr. Finch, as I understand it.

Mr. BOGLE.—Yes.

Q. What do the balance of these bills cover?

A. A bill of the Pacific Creosoting Company for launch hire, \$36.75.

Q. In connection with what was that?

A. Raising these drums up and getting them off the bottom during the diving operations.

Q. It was in connection and in conjunction with the Finch work? A. Yes, sir.

Q. What amount was paid? [180—9]

A. Yes. A bill of \$64.20, Pacific Creosote Company, was for the same service in connection with that, launch hire and labor. The next bill of the Crosby Towboat Company, towing and rent of scow and towing it over to Eagle Harbor, in that connection.

Q. For what purpose?

A. In connection with getting the drums off the bottom; it was while they were working on the bottom. Bill of Frank Walker, survey report, \$75.

Q. That was surveying the scow?

A. Surveyor's report on the cargo.

Q. Which portion of the cargo, Mr. Stevens?

A. This does not say. Entire cargo on the bill. There is a survey report for the scow, \$25. The bill of Johnson-Higgins, extending protest and for professional services, \$60.

(Testimony of H. E. Stevens.)

Q. These bills have all been paid, have they?

A. Yes, sir.

Mr. BOGLE.—I offer these bills in evidence.

Mr. McCLANAHAN.—I object as incompetent, immaterial and hearsay. It is a self-serving statement, and containing items for which the respondent is not responsible.

Paper marked Libelant's Exhibit "H," filed and returned herewith.

Cross-examination.

Q. (Mr. McCLANAHAN.)—I refer you, Mr. Stevens, to the bill of the Crosby Towboat Company, being part of exhibit "H," and ask you if you know anything about that bill other than that it was paid by the Pacific Creosoting Company. Please [181—10] examine it.

A. Other than that the services were performed. The services were performed and the bill paid.

Q. You know the bill was paid and the services were performed? A. Yes, sir.

Q. What was that service?

A. They had to have a scow and take the drums as they were brought off the bottom, and have the tug take it over. And they had to have a tug take it over from here.

Q. To take the scow over to the scene of the accident? A. Yes.

Q. I refer to the bill in the same connection, of Mr. Frank Walker, for \$25. I will ask you if you know anything about that bill, other than the fact that it was paid.

(Testimony of H. E. Stevens.)

A. It was for services on the scow that capsized.

Q. You know that, do you?     A. Yes, sir.

Q. Do you know what work was done?

A. Yes, sir.

Q. How do you know it?

A. We have his report.

Q. That is all you know of it?

A. I have seen him over there.

Q. Did you see him working on the scow?

A. I saw him around it.

Q. Surveying it?     A. Surveying it.

Q. Where was the scow when it was being surveyed?     A. Eagle Harbor. [182—11]

Q. Whereabouts?

A. West of our dock; in our boom ground, loading ground.

Q. Was it in the water, or out of the water?

A. In the water.

Q. When Walker was surveying it?

A. Yes, sir.

Q. Was it still capsized or righted?

A. I cannot recollect now. I think it was righted.

Q. Did you go on the scow at that time?

A. I was on the scow. I was not there with Walker. I was on the scow after, or about the time it was—

Q. Being surveyed. You were at the scow on or about the time it was surveyed?     A. Yes, sir.

Q. It was then righted?     A. When I was on it.

Q. When you say "about the time," do you mean the same day?



(Testimony of H. E. Stevens.)

A. No, a few days; the next day, or shortly after that time.

Q. What I asked first was, whether you saw Mr. Walker making his examination of the scow.

A. Yes, I did.

Q. And then it was in the water?

A. It was in the water.

Q. And it was righted?      A. Yes, sir.

Q. Did he make more than one examination, to your knowledge?      A. Not to my knowledge.

Q. And this is the bill for the only examination that he made?      A. Yes. [183—12]

Q. What did this examination consist of?

A. Seeing the condition of the scow.

Q. By what means—looking at it?

A. Well, getting down below, and looking at everything.

Q. Walked along the deck of the scow, did he?

A. I cannot say as to that.

Q. How large was that scow, approximately?

A. Oh, I suppose it must have been in the neighborhood of 28 or 30 by 80 or 90 feet long.

Q. That was the scow that you say the drums were on that capsized into the bay?

A. That capsized into the bay.

Q. Did you speak advisedly when you said the scow was capsized?

A. What do you mean by capsized? Do you mean clear up-side down?

Q. Turned right over.

(Testimony of H. E. Stevens.)

A. No, sir; I did not. It went over and the stuff slid right off.

Q. The scow was not capsized?

A. Not at the time I seen it.

Q. No, but at the time of the accident, did it capsize? A. I cannot say, I was not there.

Q. Have you seen the libel in this case, Mr. Stevens?

A. I cannot say. I would have to see the original.

Q. If this libel was signed in August, 1910, what was your position then?

A. Secretary of the company then.

Q. You then had knowledge of this libel, didn't you? A. Indirectly, yes. [184—13]

Q. Do you know where the company got its information that this lighter containing the creosote drums capsized?

A. From the superintendent and employees in charge at the works.

Q. That is where the information came from?

A. Yes, sir.

Q. The libel states that the lighter itself capsized. That information was correct, was it, when you received it? A. Yes, sir.

Q. How it capsized you do not know? A. No.

Q. Are you the same gentleman who answered the interrogatories filed with the answer in this case?

A. I think not. I do not think I have been on before. I do not recollect.

Q. Your name is H. E. Stevens?

A. Yes, sir. If I seen them I could tell you.

(Testimony of H. E. Stevens.)

Q. If you please, look over the interrogatories referred to and the answers thereto, filed by your company, and see if you can recognize now whether you are the man that answered these interrogatories?

A. Yes, sir.

Q. You are the man, are you?

A. Yes, sir. I am.

Q. You knew about this case somewhat, didn't you? A. Yes, sir; somewhat.

Q. Will you be the only officer of the company that will be examined as a witness, present officer?

A. Yes, sir.

Q. Where, Mr. Stevens, did you get your information on which [185—14] the answers to the interrogatories was made?

Mr. BOGLE.—I object. Mr. Stevens does not know what officers we may call to be examined.

A. From reports made by our employees at the works.

Q. From who did you get your information that the various ceilings of the ship near the bulkhead had been burned?

A. From Mr. Beal and Mr. Walker.

Q. Give the initials of Mr. Beal. A. F. D. Beal.

Q. Who was he? A. Superintendent.

Q. Who is Mr. Walker? A. Marine surveyor.

Q. You got your information from these two men?

A. Yes, and possibly others. I do not recollect now.

Q. You recollect these two.

A. Yes. They were in charge. They were the

(Testimony of H. E. Stevens.)

ones. Beal is the man who would naturally give the information.

Q. Where did you get the information that about two-thirds of the bulkhead was burned and charred?

A. From the same sources.

Q. These two gentlemen. Where did you get the information contained in your answer to the sixth interrogatory to the effect that the damage on that ship caused by the fire was such as to require repairs?

A. From the same sources that I got all of it.

Q. Where did you get your information that formed the basis of the answer to the same sixth interrogatory that the repairs consisted in the removal of the burned bulkhead and replacing with a new one? [18€—15] A. The same source.

Q. Where did you get your information in answer to the eighth interrogatory that the lumber on the "Sardhana" which was burned was saturated with creosote? A. The same sources.

Q. In fact all your information was hearsay?

A. Yes, sir.

Q. And came from the gentlemen that you have named? A. Yes, sir.

Q. Do you know whether either Mr. Beals or Mr. Walker were present at the fire? A. I do not.

Q. While the "Sardhana" was discharging at Eagle Harbor, did you have anything to do with the discharging? A. No, sir.

Q. I thought when you were examined on your direct examination that you said that you had the handling of the "Sardhana's" cargo?

(Testimony of H. E. Stevens.)

A. Simply paying the bills. I had nothing to do with the actual work over there; simply paid the bills.

Q. Have you any stock books, I do not mean stock certificates books, but stock books belonging to the Pacific Creosoting Company, that would show the amount of creosote taken from the "Sardhana"?

A. I do not know whether they can be found or not. They were in existence, but I do not know whether they can be located. They are books that we have been keeping at the works. There have been two or three changes of operating forces since that time.

Q. Well was there not a transcript made from these books to [187—16] some permanent books of the company? A. Nothing of that kind.

Q. How do you take stock then, at the end of the year?

A. We take actual stock at the end of the year.

Q. That includes all your stock. But you have no books now that would show the amount of the creosote received from the "Sardhana"?

A. Nothing on the books.

Q. Do you know anything about that?

A. Well, I know about the receipt of the cargo, yes.

Q. Do you know anything about the receipt of the drums of creosote? A. Yes.

Q. How do you know that?

A. We got a ship in there. We know she is discharging. We get a report of the discharge, the number of barrels she discharges and the quantities

(Testimony of H. E. Stevens.)

that are in the drums.

Q. You make a record of that?      A. Yes, sir.

Q. Where is that record?

A. We have it here, Mr. Bogle has it.

Mr. BOGGLE.—I have one record here.

Q. That would be the record of the receipt by you of creosote by you from the ship?      A. Yes, sir.

Q. Produce it if you have it.

Mr. BOGGLE.—I produce it under protest, because it is not proper cross-examination of this witness. I did not go into that on direct examination.

Mr. McCLANAHAN.—I do this because of the witness' statement [188—17] that he would be the only officer of the company that I would have an opportunity of examining.

(Paper handed to Mr. McClanahan.)

Q. You have handed me, through your counsel, a letter signed by F. D. Beale, dated Eagle Harbor, December 26, 1908, and addressed to the Pacific Creosoting company as being the data which I called for. Is that correct?      A. Yes, sir.

Mr. McCLANAHAN.—I offer the letter in evidence.

Paper marked Respondent's Exhibit 1, filed and returned herewith.

Q. Was there any doubt at the time of the receipt of this letter as to the amount of creosote which had been received in this cargo?

A. The exact quantity, yes; the exact number of gallons.

Q. Was that uncertain quantity ever cleared up?

(Testimony of H. E. Stevens.)

A. Yes, sir.

Q. Where is the result of that clearing up?

(Witness hands counsel paper.)

Q. You are referring now to another paper, a yellow sheet of paper, dated March 8th, 1909?

A. Yes, sir.

Mr. McCLANAHAN.—I offer this paper in evidence.

Paper marked Respondent's Exhibit 2, filed and returned herewith.

Q. This last sheet introduced in evidence purports, does it not, Mr. Stevens, to be the result of measuring the creosote left in the damaged drums of the "Sardhana," and nothing more?

A. That is all. [189—18]

Q. Now, will you please answer my former question: Did you ever definitely ascertain the amount of creosote received from the "Sardhana"?

A. We ascertained it by taking the full quantity which should have been shipped and deducting the difference between what was in these damaged drums—what should be in the damaged drums and what was originally in the damaged drums.

Q. That is how you ascertained the amount of the cargo. I am referring specifically to the damaged drums now. You ascertained the amount of creosote lost by deducting the amount which you measured from the damaged drums, from the amount which should have been in the drums if they had been full?

Mr. BOGLE.—The witness testified that he had nothing whatever to do with the measuring of this

(Testimony of H. E. Stevens.)

creosote or examination of the drums. The only information he has is the exhibits here which speak for themselves. How they were made out he does not know.

A. Yes, sir. I simply, as bookkeeper, entered them as the record.

Q. You do not know what was in originally the drums that became damaged. What was the original quantity or contents of the drums originally?

A. No, I don't know.

Q. So then your complete record of what was received from the "Sardhana" is made up of a compilation of the creosote understood to be in good drums that did not leak, plus that which was measured by you from the damaged drums?

Mr. BOGLE.—I renew my last objection. This witness had [190—19] nothing to do with the actual measuring of any creosote and was not present at the time.

Q. This exhibit 2 is from the files of your office?

A. Yes, sir.

Q. And was compiled by your own superintendent? A. Or some of the clerks in the office.

Q. And sanctioned by him at the time?

A. Yes, presumably so. He turned it in as a report.

Q. And as far as you know, as far as the records of your office show, the creosote received from the "Sardhana" by you is represented by exhibits 1 and 2? A. Yes, sir.



(Testimony of H. E. Stevens.)

Redirect Examination.

Q. (Mr. BOGLE.) Mr. Stevens, referring to Respondent's Exhibit 2, I will ask you if you have any knowledge of the items on there outside of the exhibits themselves? A. No, sir.

Q. Were you present at the time the creosote was measured? A. No, sir.

Q. Do you know whether any creosote was pumped out of the ship and included in this measurement?

A. No, sir.

Q. Or how the measurement was made?

A. I do not know how it was made.

Q. Do you know whether four drums which were lost from the scow capsized were included in this?

A. No.

Q. You have no information except as shown here?

A. No, sir. [191—20]

Q. Counsel asked you if this is the complete file of your office covering this matter of lost creosote, lost drums. In making your answer did you refer to your city office or to your office at the plant?

A. The city office.

Q. Do you know whether there is any other data at the plant of the Pacific Creosote company, at Eagle Harbor?

A. Not without making search, I do not know. It has been so long and so many papers taken out that I do not know whether it is there or not.

Q. Is it a fact that you are having a search made for it over there at your plant? A. Yes, sir.

Q. Is that the place where the data would be?

(Testimony of H. E. Stevens.)

A. That is where it would originate.

Q. This creosote was measured when, how many years ago?

A. 1908 or 1909. Latter part of 1908 and the first part of 1909.

Q. Mr. Beale was employed at that time in what capacity? A. Superintendent.

Q. He would have knowledge of these facts?

A. Yes, sir.

Q. Upon which counsel has examined you?

A. Yes, sir.

Mr. BOGLE.—I move to strike the cross-examination of the witness for the reason that it is not proper cross-examination.

(Testimony of witness closed.) [192—21]

Seattle, Washington, Feb. 21, 1913.

PRESENT: Mr. BOGLE, for the Libelant.

Mr. McCLANAHAN, for the Respondent.

[**Testimony of Roy E. Douglas, for Libelant.**]

ROY E. DOUGLAS, a witness called on behalf of the libelant, being first duly sworn, testified as follows:

Q. (Mr. BOGLE.) What is your business?

A. Salmon cannery.

Q. What was your business in the month of November, 1908?

A. Assistant superintendent of the Pacific Creosote Company.

Q. How long were you engaged in that capacity with the company?

(Testimony of Roy E. Douglas.)

A. In that capacity about two years and a half.

Q. You were assistant superintendent on the 18th of November, 1908? A. Yes, sir.

Q. Mr. Douglas, do you remember the incident of the fire aboard the "Sardhana" in November, 1908?

A. I do.

Q. About what way did this fire occur, and what called your attention to it?

A. As I recollect it occurred about 8:30 P. M. My attention was called by either the fire-alarm or cries of fire that apparently came from the British bark "Sardhana."

Q. Where were you, Mr. Douglas, when you heard this fire alarm?

A. We were attending a religious service at a private house.

Q. At the house of Mr. Hellman?

A. Yes, sir. [193—22]

Q. Where is the house situated with reference to the place where the "Sardhana" was anchored in the harbor?

A. Why, about 600 feet in a northern direction from the house, and moored to the dolphins.

Q. What did you do, Mr. Douglas, when you heard this fire-alarm?

A. I went to my house and changed my clothes.

Q. Where was your house with reference to the house of Mr. Hellman? A. Two doors.

Q. Then what did you do?

A. After changing my clothes I went out aboard the ship.

(Testimony of Roy E. Douglas.)

Q. How did you get aboard the ship, did you have to take a boat? A. No, I walked on the logs.

Q. Out to the ship?

A. Out to the ship.

Q. Was there any evidence of fire when you arrived aboard the ship. A. Yes, sir.

Q. Just what did you see of the fire aboard?

A. On arrival the sailors were passing water through the companionway and down through the captain's cabin and on in towards the fire. And considerable quantities of smoke were issuing from the companionway. After looking in the companionway and seeing that it was crowded, I merely remained out on deck.

Q. Mr. Douglas, how long did it take you from the time you heard the fire-alarm until you were aboard the "Sardhana"?

A. My recollection is that it was about 15 minutes that had [194—23] elapsed.

Q. Do you know when the fire was finally put out on board the "Sardhana"?

A. I should judge that the captain was satisfied the fire was out inside of fifty minutes after I heard the first alarm given.

Q. Mr. Douglas, were there any fire-extinguishers used in extinguishing this fire?

A. Yes, there were.

Q. Where were these fire-extinguishers secured?

A. They were secured on the docks of the creosote company.

Q. Mr. Douglas, were there any of the employees

(Testimony of Roy E. Douglas.)

of the creosote company, or crews of any other vessels lying in the harbor assisting in putting out this fire?

A. I have no recollection of the other crews, but a number of employees of the company assisted.

Q. Would you have recognized the crews from the other ships?

A. No, I would not have recognized them in the dark.

Q. Did you examine the location of the fire on the night of November 18th, the night that it occurred, did you go below?

A. I went only as far as the captain's cabin and accepted his explanation of the extent and the location of the fire that evening.

Q. Did you at any subsequent time see the location of the fire and the damage caused by it?

A. I did.

Q. What was the extent of the damage, Mr. Douglas?

A. Why, the extent of the damage, as I remember it, was very small. There was a sort of partition or [195—24] open framework separating the cargo from the lazarett, and the lumber of which this partition was constructed was charred quite heavily at the bottom, but only blackened at the top.

Q. What was the height of that partition?

A. As I recollect it, it was about five feet.

Q. What was the extent of the burning across the ship?

A. It was rather dark in that lazarette and I ex-

(Testimony of Roy E. Douglas.)

amined the thing none too closely, but as I remember it, the fire extended athwartships probably eight or ten feet, but it is possible that it ran further, because I did not crawl over that way to see.

Q. What was the extent of the fire in height, how far did it burn up this partition.

A. Actually burned, as I remember it, about three feet; above that it was merely blackened by the heavy smoke that arose.

Q. Was this entire area of about 8 or 10 feet by about three feet burned to about the same extent?

A. No, it was higher in places and lower in others, as a small fire would run higher in one place than another.

#### Cross-examination.

Q. (Mr. McCLANAHAN.) Did you see the door of the bulkhead that is in the courthouse?

A. I did not.

Q. Do you know that it was here?

A. I learned it about an hour ago.

Q. (Mr. BOGLE.) You arrived home this morning, didn't you? [196—25]

A. Yes, sir, just arrived at 9 o'clock this morning.

(Testimony of witness closed.) [197—26]

#### [Testimony of Frank Walker, for Libelant.]

FRANK WALKER, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. BOGLE.) State your name, occupation and residence, Mr. Walker.

A. Frank Walker. Marine surveyor; naval architect. Residing at Seattle.

(Testimony of Frank Walker.)

Q. How long have you been engaged in that business, Mr. Walker? A. About fifteen years.

Q. How long have you been engaged in that business in the city of Seattle?

A. About that length of time. I cannot say exactly.

Q. Mr. Walker, did you on or about the 17th day of November, 1908, and prior thereto and subsequent dates, make survey of the cargo over at Eagle Harbor which was at that time being unloaded from the British bark "Sardhana"?

A. Yes, I attended the discharging of the ship.

Q. I hand you this paper, Mr. Walker, and ask you if that is your report of that survey.

A. Yes, that is one of my reports of the survey of that cargo.

Q. Did you make more than one survey on the cargo to ascertain the damage to the cargo and the loss of creosote?

A. Well, I attended that at various dates, and I think this runs from November 17th to December 28th.

Q. Does that report of survey cover the entire damage to and loss of drums?

A. Yes, this covers all the cargo that was discharged from the ship, the number of gallons discharged, and number [198—27] of gallons supposed to be there.

Mr. BOGLE.—I offer this paper in evidence.

Paper marked Libellant's Exhibit "I," filed and returned herewith.

(Testimony of Frank Walker.)

Q. Mr. Walker, the recitals on the first page of that—where did you obtain that information?

A. I obtained it from the vessel's log.

Q. Ship's log?      A. Ship's log.

Q. Mr. Walker, I wish you would explain how you arrived at the figures on page 2, showing the number of drums that were damaged and lost.

A. I arrived at the number of drums by actual tally.

Q. How was that tally taken, Mr. Walker, how did you segregate the damaged?

A. Well, as the drums came out of the vessel the good ones were placed in one pile and the damaged drums were placed in another pile.

Q. Did you afterwards inspect the damaged drums?      A. I went over every drum.

Q. How many damaged drums were there?

A. Just as this survey says. I have no other recollection than the survey.

Q. That survey was taken from your actual observation and count?      A. There was 741 damaged.

Q. That is from your actual count?

A. Yes, from my actual count.

Q. What was the extent of the damage, Mr. Walker. Was the market value of the drums injured or destroyed? [199—28]

A. The drums were useless. They were stove in and bulged and dented and leaking; 25 of them were entirely empty.

Q. Explain how you arrived at the number of gallons of creosote which were lost.



(Testimony of Frank Walker.)

A. The way we arrived at the loss, we took the invoice number of drums and what each should have contained.

Q. That gave the total number of gallons.

A. Yes, that should have been there. And as the drums were emptied into a tank, an empty tank, and as the drums were emptied the amount was shown by the meter reading.

Q. Were these readings taken under your supervision? A. Yes, sir.

Q. Do you know whether they were correct?

A. I am satisfied they were correct when I made that survey.

Q. Do you know whether any lost creosote was pumped out of the hold of the ship?

A. There was a small quantity pumped out and dumped into this empty tank.

Q. Do you know in what condition that creosote was?

A. It was dirty. It had been among the ballast.

Q. Have you any idea now, at this time, approximately how many gallons were pumped out of the hold?

A. I could not tell you exactly; three or four thousand gallons.

Q. This report shows a loss here of 56,267.2 gallons. Have you any knowledge as to how that loss occurred?

A. Well, I know that the creosote was not there. That the drums were leaky, and in my investigation I understood it was pumped overboard at sea. [200—29]

(Testimony of Frank Walker.)

Q. Would that be an ordinary precaution, if there was any great amount of creosote in the hold in rough weather?

A. Any great amount loose liquid in the hold of a ship in rough weather would be a damage to the vessel.

Q. This report of survey showing loss of creosote and damaged drums, does not show the loss which occurred by the capsizing of the scow?

A. I made a separate report on that.

Q. I hand you this paper, Mr. Walker, and ask you if that is your report.

A. Yes, that is my report on that.

Q. The report shows the number of drums on the scow at the time it capsized?

A. Yes, and shows a report of the number recovered by the divers.

Q. And the number lost.

A. 34 lost; 15 light ones picked up floating, these were secured, partly empty ones.

Mr. BOGLE.—I offer this survey report in evidence.

Paper marked Libellant's Exhibit "J," filed and returned herewith.

Q. Mr. Walker, what was the condition of this scow at the time you made this examination and survey?

A. I think it says in there that she was bottom up.

Q. Did you examine to see whether she had made any water or leaked?

(Testimony of Frank Walker.)

A. I cannot say; I cannot remember. (Examines Exhibit "J.") She was tight. There was nothing the matter with the barge. I examined her afterwards.

Q. She could get no water in her? [201—30]

A. No, she was not leaking.

Q. When did you examine her, how long after she capsized?

A. I cannot say. I cannot remember exactly. When I examined the barge she was righted up on the gridiron.

Q. Mr. Walker, do you remember making a survey of the "Sardhana" to ascertain the extent of the fire which occurred on board of her on November 18, 1908? A. I do.

Q. I hand you this report of survey and ask you if that is your report made from that examination?

A. Yes, sir, that is my report on that.

Q. Do you remember when you made that examination, Mr. Walker?

A. I made that examination on the 20th day of November.

Q. This report was made from personal investigation and inspection of the fire as to the amount of damage?

A. Yes, sir. The report distinctly states what I found and the exact date of it.

Q. Mr. Walker, do you remember now the extent of the burning of the bulkhead and the door?

A. I remember that the bulkhead was considerably charred more or less all along the forward part

(Testimony of Frank Walker.)

of it, including the door.

Q. What was the width of the bulkhead?

A. Ran right across the ship.

Q. Do you have any idea how far it was across the ship?

A. I do not know. The beam of the ship probably forty feet. Entirely across the aft between-decks.

Q. It was burned more or less all the way across?

A. Yes, more or less all the way across—no, not all the [202—31] way across, about the center of the bulkhead, and I would say there was some 25 feet charred and burned.

Q. Was the nature of the burning about the same all along?

A. Yes. It varied; it went up and down. Varied on the bulkhead, but distinctly showed the fire, it was charred.

Q. Was there any cargo or stores in the immediate vicinity of this fire?

A. Yes, creosote drums in the immediate vicinity, forward of it.

Q. Was there any dunnage?

A. Yes, dunnage where the fire originated in the dunnage lying at the bottom of the bulkhead on the between-decks.

Q. Was this the dunnage that had been used in stowing the creosote?

A. Yes, there was more or less of it.

Q. Was there any burning or charring of the ceiling of the vessel?

(Testimony of Frank Walker.)

A. Let me see my report. (Examines report.) There was none to the ceiling of the vessel. She had no ceiling. She had battens on her sides. On the between-decks there was no ceiling.

Q. Was there any portion of the dunnage on fire burned?

A. Yes, there was a lot of the dunnage burned and charred.

Q. Was the flooring damaged to any extent?

A. You mean the deck?

Q. Yes.

A. No. There was quite a good deal of this dunnage had run up two or three feet high just where they had thrown the dunnage after removing some of the drums. That dunnage was all distributed across the forward part of [203—32] the bulk-head. The fire did not get down to the deck.

#### Cross-examination.

Q. (Mr. McCLANAHAN.) Mr. Walker, where did you obtain your information, other than that which have personal knowledge of, in regard to the fire? A. From the master of the vessel.

Q. Did you know at the time of the fire how the discharging of the drums had progressed?

A. Did I know at the time of the fire?

Q. Yes, how much had been discharged?

A. I cannot remember now.

Q. Who was it did the tallying of the drums as they were discharged?

A. I cannot tell you who they were now. They were tallymen employed by the Pacific Creosote

(Testimony of Frank Walker.)

Company, I believe.

Q. What was your particular employment at that time?

A. My employment was to watch that cargo as it was discharged from the vessel and report on the same what I found.

Q. Report on its condition?

A. On its condition and the quantity discharged and the condition of the drums as they came out.

Q. You do not now know how far the discharging had progressed at that time?

A. No, I do not remember.

Q. You do not know then whether the drums immediately forward of the bulkhead had been reached in the discharging or not?

A. Well, some of the drums had been taken out, but the [204—33] majority of the drums in the between-deck—

Q. I do not think you understand me. There were drums piled in front of the bulkhead?

A. Yes.

Q. Stood there. A. Yes, sir.

Q. In the between-decks? A. Yes, sir.

Q. You do not know whether these drums or any part of them had been discharged at the time of the fire?

A. I do not recollect. I know I went over the top of the drums to get to where the fire was.

Q. So that they had not been discharged?

A. No, sir.

Q. Then where did this dunnage come from that

(Testimony of Frank Walker.)

you say was thrown forward of the bulkhead?

A. I cannot tell you where the dunnage came from exactly, because the cargo had shifted at sea, and there was a lot of dunnage scattered all over. They had been restowing it at sea.

Q. How do you know that there was dunnage there? A. Because I saw it.

Q. Saw what, the remains of the dunnage?

A. The dunnage was not all burned up, yes.

Q. Did you see any charred dunnage?

A. Yes, sir.

Q. Was it loose? A. Yes, sir.

Q. Was there any charred dunnage in front of the bulkhead at the time?

A. There was dunnage at the forward side of the bulkhead more or less scattered all over. [205—34]

Q. Answer my question directly.

A. There would be some forward in the way of the door.

Q. You remember distinctly that there was charred dunnage in front of the bulkhead door?

A. No, I do not, immediately in front of it.

Q. Was there dunnage in the drums themselves?

A. Between the drums.

Q. In front of the bulkhead door. A. Yes, sir.

Q. You saw that, did you? A. Yes, sir.

Q. Was that charred? A. No, sir.

Q. How far was that dunnage and the ends of the drums from the bulkhead door?

A. Oh, I could not tell you; some little distance.

Q. Give us your best estimate.

(Testimony of Frank Walker.)

A. I could not tell you. Probably five or six feet.

Q. That is your best recollection.

A. Yes, I could not recollect.

Q. You might be mistaken about that?

A. I would not swear to the distance the drums were from the bulkhead.

Q. Might be 18 inches.

A. No, it might be more than that. You could walk between them.

Q. It might be two feet.      A. More than that.

Q. Mr. Walker, was your report of survey on this fire assisted in any way by an examination of the ship's [206—35] log?

A. Not the fire report, not that I recollect. The master's statement. He had his log-book in the cabin, and had his entry in the log-book of the fire, I remember reading that.

Q. If there is a similarity between the language of the log and the language of your fire report, how do you account for that?

A. Because the master had a written report which he gave me to read.

Q. So, then, your report was assisted by some information that you received from the master?

A. Yes, regarding the origin of the fire and what took place.

Q. And the fire itself?

A. And the fire itself. I was not present when the fire was burning.

Q. So that your report then in part is assisted?



(Testimony of Frank Walker.)

A. It says exactly what it says.

Q. Assisted by some information that you received from the master, either written report or an examination of his log?     A. Yes, sir.

Q. Now, is your testimony at all assisted by this report from the master?

A. No, I cannot say that my testimony is.

Q. Have you an independent recollection now of the fire, as you saw it, the effects of it?

A. I have an independent recollection after four or five years.     [207—36]

Q. Is that a very strong opinion or memory?

A. I have a strong recollection after reading my reports on that of the fire, yes, I have a good recollection.

Q. Now, you have made a statement that that fire extended athwartships?     A. Yes, sir.

Q. For some 25 feet.

A. I said maybe twenty feet.

Q. It might be less than that?

A. I did not measure it.

Q. Now, as a matter of fact, Mr. Walker, don't you remember that the bulkhead door was the seat of the fire?

A. No. I remember the bulkhead was burned in a similar manner to the door in numerous places.

Q. Numerous places?     A. Yes, sir.

Q. How would you account for a fire that had that kind of an origin, what is your opinion?

A. I did not attempt to arrive at any.

Q. Well, it would indicate, from your testimony,

(Testimony of Frank Walker.)

would it not, that that fire had been set in several different places along the bulkhead?

A. I should not hazard an opinion on it. The fire was there, I was positive of that, and there was more of it than the door.

Q. And you think, as you remember it now—

A. It might have run along on inflammable material, you could not tell.

Q. There were several distinct sets of fire, original fire, as you remember? [208—37]

A. Not several distinct sets. I remember the fire went up and down as a fire will go.

Q. Do you know the character with reference to inflammability of saturated or dunnage saturated with creosote as to inflammability?

A. I have not gone deeply into that.

Q. Did you assist in the preparation of an extended protest for the master to sign?

A. Not that I am aware of.

Q. Did you assist in the preparation of any papers for the Pacific Creosote Company?

A. I have no recollection of that in any way at all.

Q. Did you at the request of the Pacific Creosote Company furnish them with any information?

A. I furnished the Pacific Creosote all the information contained in these reports. That is my business, I was employed by them to do it.

Q. Did they, as far as you know, receive from you the data upon which they formed their libel?

A. I know nothing about their libel at all. All the data they ever received that I have any recollection

(Testimony of Frank Walker.)

of is in these reports.

Q. In this case we propounded to the libellant certain questions which they have answered, and I would like to ask you, Mr. Walker, if you had anything to do with furnishing the data on which the answers were based in their libel. They say that the bulkhead together with the bulkhead door was burned. They further say that other parts of the ship were burned, and we asked them the question, what were these other parts of the [209—38] ship that had been burned. Did you furnish them the data for the answer to that?

A. All I recollect furnishing them is the reports I have given, that you have a copy of there. I talked them over with them, but I do not recollect furnishing any information.

Q. Their answer was that the floors and ceiling of the ship near said bulkhead were burned. Did you furnish them with that information?

A. No, not that I am aware of.

Q. Is that true, that the floors and ceilings were burned near the bulkhead?

A. There are no floors there. The report covers all there was of the fire.

Q. You mean by *saiding* there is no floor there *there is* the between-decks?

A. That is not a floor; that is a deck.

Q. That might be a floor to a man who is not versed in marine matters, and the underneath of the deck might be the ceiling, and that is evidently what the Pacific Creosote Company meant when it said

(Testimony of Frank Walker.)

that the ceiling and the floors were burned. That is not in accordance with the facts?

A. We speak of the ceiling down below.

Q. That is not in accordance with the fact, is it?

A. There was no deck burned.

Q. Now, we ask them another question. We ask them if the whole of the bulkhead forward of the lazarette was burned, and if it was not, how much of it was burned, and they reply that about two-thirds of it was burned [210—39] and charred. Did you furnish them with that information?

A. I cannot say. I may have done so.

Q. How high was the bulkhead?

A. The bulkhead ran from deck to deck.

Q. How high would that be?

A. I should say the deck was about seven feet six.

Q. Your estimate of the beam of the ship was forty feet? A. Not the beam of the ship—

Q. I do not mean the beam technically speaking, but the athwartship there.

A. The beam of the ship would be about forty feet forward and the ship would decrease going aft, but I could not say.

Q. Give your best estimate what the athwartships would be there.

A. That is easily obtained from Lloyd's Register. I cannot give you her beam. She is a small bark, if I remember right.

Q. Suppose I assume the beam of the ship was 35 feet, cannot you give an estimate of the width of that bulkhead?

(Testimony of Frank Walker.)

A. Estimating the beam of the ship at 35 feet, she would run in there to about 30 or 31 feet.

Q. Was it correct, then, for the Pacific Creosoting Company to say that two-thirds of this bulkhead, seven feet high by thirty feet wide was burned and charred?

A. Well, assuming that she is about thirty feet wide there, there would be about twenty feet of the bulkhead burned, that would be true.

Q. Was there 20 feet burned? [211—40]

A. I estimate that.

Q. That is your judgment? A. Yes, sir.

Q. Have you seen the door?

A. Not since it was in the ship when I examined it.

Q. You have not seen it since it was brought here?

A. No, sir. I have never seen the door since it was removed.

Q. You knew it was here? A. I heard it was.

Q. You have been in the city, have you, all the time?

A. Not all the time. My home is in the city.

Q. When did you first hear that the door was here?

A. That I could not say; a few days ago.

Q. Have you any objection to stating why you did not want to see it, did not see it?

A. I have never been asked to see it. I certainly am not going to take a trip to the courthouse just to pass the time.

Q. By the way, did you make a survey of this fire?

A. I was requested to make a survey as the survey report calls for.

(Testimony of Frank Walker.)

Q. There was no cargo burned?

A. Well, at that time I was informed that there had been a fire on the ship and they would like me to make a survey and report what the damage was. That is all I know about it.

Q. Something unusual, was it not?

A. No, not in that line of business.

Q. I mean the circumstances.

A. They did not know themselves whether there was any [212—41] cargo damaged, I don't suppose. Anything that happened at that time I was asked to report on.

Q. Now, going back to these questions again. We asked them whether the damage caused by the fire was such as needed repairing, such as required repairing, and their reply was that the damage was such as it required repairs, and that the repairs were made and consisted of removing the burned bulkhead and building a new one in its place. Did you furnish them with that information?

A. No, I had nothing to do with that.

Q. Do you know whether that is true or not?

A. No, the bulkhead was not renewed while the cargo was coming out of the ship. It was after I finished with the ship.

Q. Did they require renewing?

A. Oh, yes, it required renewing.

Q. Did you know that the ship was owned by Andrew Weir & Co.?

A. Oh, yes, I did, casually.

Q. Who was their surveyor, their personal sur-

(Testimony of Frank Walker.)

veyor here at the time?

A. I believe Captain Panton was their surveyor.

Q. Was there not Captain Baird?

A. No, he was their superintendent. I think Captain Panton was surveying the cargo for them.

Q. He surveyed the cargo?

A. I believe so. I know he was over there on some ships.

Q. He is dead now?

A. Yes. We used to go over together. [213—42]

Q. You saw nothing yourself of the fire?

A. Oh, no, I was not there until two days after.

Q. Did you make more than one examination?

A. I went over and examined the fire, made my notes and went back and made my report. I do not think I ever took any more notice of it.

Q. What do you mean by notes?

A. My notes that I made in my book, regarding the damage and entered it in the report.

Q. Where is that note-book?

A. Oh, Lord! That is in the files of the past.

Q. You did not keep them?

A. No, they are no use.

Q. It is a good practice to keep your note-books.

A. I keep some of them if there is any interest in them.

Q. I understand from your testimony that you *considered fire* quite an important fire?

A. I considered that the vessel had a very narrow escape.

Q. Because of the possibilities or the actualities?

(Testimony of Frank Walker.)

A. Because of the actualities.

Q. You think it was from your examination actually a material fire? Materially important?

A. There was the marks of a good fire.

Q. You are now touching on possibilities. Was there actually a good fire?

A. Yes, sir, there was a fire, a good fire there. Of course, if the creosote once got to going there would have been something doing.

Q. But in your judgment there was actually a material fire? [214—43]

A. There was actually a material fire there.

Q. What, in your opinion, was the value of the damage done there?

A. Oh, the value of the damage I should say was \$150 to \$200.

Q. This bulkhead was so damaged that you considered that it was proper and necessary that it should be removed and repaired?

A. If it had been mine I should have renewed it.

Q. For what purposes, for performing the duty for which it was originally intended?

A. The bulkhead was intended to divide off the lazarette from the cargo slips and from the stores; that is where all the ship's stores are.

Q. The repairs were necessary for that purpose?

A. Yes, sir.

Q. So that the fire had materially weakened and injured this partition?

A. Yes, sir, it certainly had.

Q. You have in your experience since then been



(Testimony of Frank Walker.)

pretty busy haven't you, making surveys of ships?

A. Yes, busy all the time, practically speaking.

Q. You are not very zealous to retain these little matters of detail in your mind for any considerable time, are you?

A. No, after I report on matters, as a rule they pass from my sight.

Q. You rely on your reports to refresh your memory?

A. Yes, sir, otherwise I would get them mixed.

Q. So that your reports, where they contain information at first hand, are more apt to be reliable now than [215—44] your recollection?

A. Yes, the report is more apt to be reliable than my recollection.

Q. Now, I want to call your attention to your survey of the barge or lighter, that was capsized. Will you state when it was, after the capsizing of the barge, assuming that the capsizing of the barge was on the 21st of November, how long after that was it that you saw the barge yourself?

A. I stated in the report that I examined the barge, I examined the barge the same date.

Q. You examined the barge the same day it was capsized? A. She was bottom up, rather.

Q. Where was she when you examined her?

A. If I remember rightly, she was still made fast alongside the ship.

Q. Is that where you made your survey of her?

A. Where I made my first examination of her.

Q. What did that examination consist of?

(Testimony of Frank Walker.)

A. Simply looking at the barge as she lay capsized.

Q. You did not get much information?

A. No, none.

Q. Of course, a man in your profession is so used to noting and finding out the cause of things and ordinary matters in your line, that sometimes you come to conclusions, do you not, without investigation and an investigation may prove it to be true, but you sometimes reach conclusions on a cursory examination, don't you?

Mr. BOGLE.—I object as incompetent and immaterial.

A. Sometimes I hazard an opinion to myself.  
[216—45]

Q. Did you hazard an opinion to yourself when you first saw this capsized lighter, as to the cause of its capsizing?

A. No, I took the statements of the people, and believed it was correct that the cargo shifted on the barge and caused her to capsize.

Q. What people made you that statement?

A. I think it was the master, the master and mates.

Q. And before that you had not hazarded an opinion yourself?

A. No, I asked the reason for it, to start with, what caused it.

Q. Did not there appeal to your mind a reason, at once?

Mr. BOGLE.—I object as incompetent.

A. Well, I cannot say so. A barge is very apt to capsize.

(Testimony of Frank Walker.)

Q. Don't they capsize for one well known reason?

A. They capsize for various reasons. Improperly loaded. Water in them. Shifting cargo. It is very easy for them. In towing a barge of gravel or sand or brick or anything of that kind, get into a seaway and shifting it over, in nearly every case the barge will go right over.

Q. Did you ever know of a barge to capsize from stress of sea or wind, and nothing else?

A. Yes, I have known them to capsize from stress of weather combined with shifting of cargoes or leakage.

Q. Now, you are getting on to something that seems to me is the true reason for the capsizing of the barge, and that is leakage. Is not that the only thing that will cause them to capsize?

A. Oh, no. Not in that case, where the barge had no water [217—46] in it when I examined it.

Q. Now, let us assume that we are loading a barge with creosote drums. A. Yes.

Q. Do you know who loaded them and how they were loaded in this instance?

A. I don't know how they were loaded.

Q. Well, assume then that barge was loaded with drums athwartships lying on their sides? A. Yes.

Q. Do you remember the way these iron drums had iron rims around them projecting over the sides, and they were built up as a pyramid, three tiers high, so that if that barge capsized she must have capsized athwartships? A. Yes, sir.

Q. Now, how could that barge so loaded capsize

(Testimony of Frank Walker.)

athwartships unless she is leaking?

A. Oh, very easily.

Q. Just explain it.

A. By the shifting of the cargo on the deck of the barge.

Q. How could that cargo shift?

A. There was a swell, and the vessel bumped into the barge or the barge bumped into the vessel and caused it to shift. I was satisfied of that.

Q. If it shifted you mean the barge must list?

A. Yes.

Q. If it listed to one side what would be the result on the cargo?

A. Result in the cargo sliding overboard and over would go the barge. [218—47]

Q. As soon as the drums slid overboard, either port or starboard side, would not the barge right itself on the other side?

A. The barge would go down on the heavy side.

Q. When that was released from the weight though she would right herself?

A. No, she would go over again.

Q. Right herself and go to port, if the load had gone over the starboard side?

A. If the barge was to tip again over to this side, if there was some cargo aboard, it would come on the other side.

Q. And throw over something there.

A. We can tip a barge over with a few tons of gravel. They frequently do it, to turn it upside down to cork them.

(Testimony of Frank Walker.)

Q. If a barge is leaking and has water in it there would be a permanent list, increasing all the time, would there not? A. Yes, a gradual list.

Q. That would absolutely necessitate the capsizing of the barge?

A. No, that would speak for itself and be looked after by the people in time.

Q. Suppose that the barge was listing gradually at night time, leaking, that would be a permanent list that eventually would capsize the barge?

A. Yes, eventually capsize the barge.

Q. Do you know which way this barge capsized?

A. No, I do not.

Q. Where did you get, or did you get any information as to the cause of the capsizing? [219—48]

A. I got my information from the crew of the ship.

Q. What was said to you?

Mr. BOGLE.—I object as immaterial and hearsay.

A. Just what it states in the report.

Q. Do you know now what it says in the report without refreshing your recollection?

A. No. I think it says a heavy gale sprang up, an unusually heavy gale for that harbor, southwesterly, and that she bumped into the "Sardhana" and caused the cargo to shift and the barge capsized. I think something to that effect.

Q. The report says: "In my opinion the cause of the accident was entirely due to the part cargo of drums shifting on the deck of the barge, the harbor in which the ship and barge were moored is considered perfectly safe, and protected from wind, but

(Testimony of Frank Walker.)

on this occasion an exceptionally heavy ground swell swept in.”

A. The first part of the report, will you read that?

Q. That is the report obtained, you say, from the manager of the creosote works and from the officers of the bark “Sardhana”?

A. Yes, sir, that is right.

Q. Did you give your opinion in your own way—where did you get your—

A. I gave my opinion from the information I received.

Q. So that your opinion and the information you received in regard to the capsizing of the lighter are supposed to be identical?

A. This states here “Before a tug could be obtained to move the barge she collided heavily with the bark which [220—49] contact shifted the drums to one side, and caused the barge to capsize.”

(Previous question read to witness.)

A. Well, I formed my opinion from the information I received from the facts that I saw.

Q. Now, after this first visit to the barge, I understand you saw it again?

A. I saw the barge again, yes.

Q. Where was it then?

A. I think the barge was at West Seattle at that time. I would not swear it was.

Q. Was righted when you saw it?

A. The second time, yes.

Q. How long afterwards?      A. I could not say.

Q. A number of days?      A. I could not say.

(Testimony of Frank Walker.)

Q. What does the report say?

A. I do not pretend to remember five or six years. Yes, the report shows it was some days after. The report covers from November 23 to December 12.

Q. So that it was probably around December 12th that you made this further examination?

A. No, I could not say the date of it; I would not attempt to say.

Q. It was some days after you first saw it?

A. Yes, they towed her away and righted her and she was on the gridiron.

Q. What was the examination and survey you made then, do you remember? [221—50]

A. Well, I walked around the barge and examined her. There was nothing done to the barge, and she was not leaking.

Q. That is the extent of your examination, walking around the barge?

A. That was all that was necessary. There was nothing done to her. She was on the gridiron.

Q. You mean she was out of water?

A. Yes, sir.

Q. You did not do any corking?

A. I did not have anything done at all.

Q. That examination formed the basis of your report?

A. That examination was sufficiently close to be sure of the condition of the barge.

Q. It formed the basis of your report?

A. Yes, sir.

Q. Now, the next matter that I will ask you about

(Testimony of Frank Walker.)

is the report on the damaged creosote. I believe you have already said that statements of facts contained in your report are more apt to be correct than your recollection now? A. Yes, sir.

Q. Because they were made at the time?

A. Yes, sir.

Q. Who was it that emptied these 741 damaged drums and measured the creosote contained in them?

A. It was done under the superintendent of the Pacific Creosoting Company.

Q. You had nothing to do with that?

A. Oh, no.

Q. They simply reported to you that they had emptied these [222—51] drums and measured the contents?

A. I saw quite a number emptied.

Q. They reported to you that they had measured the contents of the damaged drums?

A. They gave me the meter readings.

Q. Then they contained how many gallons?

A. They gave the meter reading as it was discharged, as it was emptied.

Q. Did you have anything to do with the compilation of the aggregate number of gallons?

A. I took the meter readings and made my own deductions.

Q. What was it you did in the way of figuring, actually?

A. The superintendent would give me the reading of the meter each day.

Q. Each day? A. Each day.



(Testimony of Frank Walker.)

Q. It took more than one day to empty these?

A. I mean the whole cargo.

Q. I speak of the damaged drums. Did not you treat this separately from the other drums?

A. The damaged drums were all put to one side and were last emptied.

Q. When you took these up and began to empty the damaged drums, was the meter reading made to you as a finality or was it made piece-meal?

A. Made to me in piece-meal. This is the final entry.

Q. It was your mental calculations that arrived at this result that there was so many gallons of creosote?

A. It was arrived at jointly between the superintendent of the creosote company and myself. [223—52]

Q. Did you see them in the process of emptying the drums? A. Yes, a great number of them.

Q. Then from the contents of the damaged drums you proceeded to take that amount from the amount you supposed the drums should have contained, if full? A. Yes, sir.

Q. And the result was the lost creosote.

A. The creosote that was missing.

Q. When you first went on board the "Sardhana," did you make any examination of the hold of the vessel to find out how much creosote was in it?

A. No, I did at the last. You could not tell at the first.

Q. At the last you did? A. Yes, sir.

(Testimony of Frank Walker.)

Q. What did you find?

A. I found there was a little creosote in the bilges.

Q. How many inches?      A. I could not say.

Q. You did not make any soundings?

A. I went down in the hold with the superintendent and that creosote was taken out of the bilges and sent ashore.

Q. You saw it taken out. How was it taken out?

A. In barrels, if I remember right.

Q. Pumped out by the crew?

A. I don't know who pumped it out.

Q. You saw it being put in barrels, did you?

A. I saw it in barrels.

Q. Do you know what became of it afterwards?

A. Put in the tank with the rest. [224—53]

Q. Did you see it?

A. I did not stand by watching it go into the tanks.

Q. How do you know it went into the tank?

A. I am satisfied it did; they would not throw it away.

Q. Do you have a record of the amount of creosote put in barrels?

A. No, not separately, because I had the final meter reading, that was dumped with the rest of the damaged stuff.

Q. Your final meter readings shown by your report, do not show a statement of the creosote from the barrels?

A. No, because they treated that the same as the rest of the cargo. It was just the final clean-up.

Q. The creosote from the barrels went into the

(Testimony of Frank Walker.)

general tank with the balance of the creosote, did it?

A. Yes, sir.

Q. And treated as good creosote?

A. I don't know anything about that how they treated it. That is what they gave me as good creosote.

Q. Gave credit. A. In the figures.

Q. What became of the 56,000 gallons that were missing?

A. I don't know. All I can tell you is what the crew told me, that it was pumped overboard.

Q. What member of the crew told you it was pumped overboard?

A. I think several of them. The captain did not, but the mates did.

Q. The mates. That is the only way that it could be accounted for?

A. That is the only way; it was not in the bark.

Q. Could not get out of the ship? [225—54]

Q. Do you know how much was finally pumped out of all the limbers?

A. Three or four thousand gallons.

Q. How do you know?

A. Well, I recollect that is about what we estimated it.

Q. How much would that be in barrels?

A. I could not tell you.

Q. Could you give an estimate?

A. No, I could not.

Q. Do you know anything about how long it took to pump it? A. No.

(Testimony of Frank Walker.)

Q. Did you see them pumping on more than one occasion?     A. No.

Redirect Examination.

Q. (Mr. BOGLE.) Do you know the number of gallons contained in a drum of creosote?

A. I do not recollect. I did know at the time but it has gone from my mind.

Q. Do you remember whether the gallons contained in your report referred to Imperial gallons or United States gallons?

A. I could not swear to that. I think it was Imperial gallons all of it.

Q. I call your attention to a note at the bottom of Exhibit "I," and ask you if that is your note, in pencil?

A. No, I did not make that. That is not my writing.

Q. It is "56,267.2 United States gallons equals 46,889  $\frac{1}{3}$  Imperial gallons."

A. I don't know who made that note. I don't know anything [226—55] about it.

Q. Did you check any of the meter readings of the creosote that was emptied into this tank that were made from day to day at the plant of the creosote company, as to the number of gallons that were dumped into the tank?

A. Yes. I checked them and satisfied myself that they were correct.

Q. Counsel has examined you upon your survey of the fire damage. You stated that some of the information contained in that survey was taken from an

(Testimony of Frank Walker.)

abstract of the vessel's log. Was there any statement contained in that survey as to the extent of the damage, extent of the fire obtained from any other source than your own inspection?

A. No, not the extent of the damage.

Q. That was from your own inspection?

A. There was some stores damaged that I did not take any note of at all.

Q. Do you know at what temperature creosote is inflammable? A. No, I do not.

Q. Mr. Walker, when was this matter first taken up with you by the libelant in this case as to the question of getting your testimony in this case, do you remember?

A. No, as near as I can recollect just a few days ago.

Q. Do you remember whether or not you were leaving town and were unable to attend at the hearing yesterday? A. Yes, I do.

Q. When did you return? A. This morning.

Q. And you testified here this morning and you would not have had an opportunity to examine that door, would you? [227—56]

A. No, I had no opportunity to examine that door this morning.

Q. Mr. Walker, the libelant's answer to interrogatories which counsel has referred to. The answer to the 6th interrogatory states that the damage was such as to require repairs, and goes on to say what the repairs would be. Subsequently that the repairs were made by the ship's carpenter. Have you any

(Testimony of Frank Walker.)

information about that? A. No, none at all.

Q. Do you know whether they made the repairs here or not?

A. I do not know who made the repairs.

Q. Mr. Walker, from your examination of this barge do you state positively there was no water in her at the time she capsized?

A. There was no water in her at the time.

Mr. McCLANAHAN.—I object as calling for a conclusion. He made no examination of the barge at the time.

Q. I will ask you whether there was any water in her.

A. There was no water, the barge capsized. No water in her when I examined her, on the gridiron.

Q. Was it necessary to pump any water out of her before she could be towed to West Seattle before putting her on the gridiron?

A. Not to my knowledge.

Q. If she had been full of water and leaking, could you easily tell whether she had water in her?

A. When she was capsized?

Q. If this barge had no water in her at the time she capsized was there any way, any cause, anything which would cause her to capsize on the shifting of the cargo? [228—57]

A. Not that I could see; the heavy swell would shift the cargo.

Q. This report upon this damage to the barge, was that made from one inspection that you made of the barge when she was on the gridiron, or from all your

(Testimony of Frank Walker.)

inspections at various times?

A. I inspected her when she was bottom up and when she was on the gridiron.

Q. And your report was made from these inspections? A. Yes, sir.

(Testimony of witness closed.)

Mr. BOGLE.—I offer in evidence the survey report identified by the witness relating to the fire on board the “Sardhana.”

Paper marked Libelant’s Exhibit “K,” filed and returned herewith. [229—58]

**[Testimony of Joseph Robert Barnaby, for  
Libelant.]**

JOSEPH ROBERT BARNABY, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. BOGLE.) What is your business?

A. Importing creosote.

Q. Where do you reside? A. Seattle.

Q. Do you import creosote on your own account or represent some firm or corporation?

A. I import on my own account. Previously I acted as agent of Blagden, Waugh & Company, of London.

Q. Were you acting as their agent in the year 1908?

A. Yes, sir. I was their agent in the year 1908.

Q. Mr. Barnaby, do you know whether or not the firm represented by you, sold any creosote to the Pacific Creosote Company in the year 1908, which

(Testimony of Joseph Robert Barnaby.)

was shipped from England to Eagle Harbor by the British bark "Sardhana"?

A. Yes, sir, I sold that cargo myself to the Pacific Creosote Company.

Q. The negotiations were made through you, were they? A. Yes, sir.

Q. Do you know how many drums of creosote were shipped in that consignment?

A. As far as my recollection, about 2700.

Q. Do you know what price the Pacific Creosote Company paid you, or your company?

Mr. McCLANAHAN.—I object as immaterial.

A. Yes, I do know the price by looking up my records. I think I recollect the price.

Q. Mr. Barnaby, I hand you a document marked exhibit "C," and ask you if you know, of your own knowledge, what that [230—59] document is?

A. Yes. That is the Consular invoice for that particular cargo.

Q. And the different items on there represent the cost to the creosote company of the different items there shown, and the aggregate sum is the sum paid by the creosote company for that cargo?

Mr. McCLANAHAN.—I object as immaterial.

A. Yes, sir, that is the amount.

Q. Is that the reasonable market value of that, do you remember?

Mr. McCLANAHAN.—I object on the ground that the witness is not qualified to testify.

A. Yes, sir.

Q. How long have you been engaged in the creosote



(Testimony of Joseph Robert Barnaby.)

sote business?     A. Seven years.

Q. During that time had you been selling creosote to any great extent?

A. Oh, yes, quite a large extent.

Q. And do you know, among the sales that you have made, that the price paid for this creosote was the reasonable price for the amount of creosote in drums, contained in this consignment?

A. Yes. I recollect now that the price of that cargo was sixpence and nine-sixteenths, c. i. f. Seattle.

Q. Per gallon?     A. Yes, sir.

Q. I call your attention to the different items.

A. I remember the amount now which I sold the cargo at to the Pacific Creosoting Company. [231—60]

Q. I call your attention to the different items in the Consular invoice, and ask you if the amounts shown opposite the different items, the total of which make up the aggregate sum which was paid for the creosote, were the reasonable value of the different items of drums, creosote, etc., as shown?

Mr. McCLANAHAN.—I object, the witness is not qualified.

A. Yes, these are the reasonable figures. These figures are correct; I know them to be.

Q. As agent of the shipper of this creosote, did you attend at Eagle Harbor at the time this creosote was being unloaded, to see the condition of the creosote?     A. I did.

Q. And were you there at all times when the creos-

(Testimony of Joseph Robert Barnaby.)

sote was being unloaded?

A. No, I was not. I was there several times.

Q. Will you state to the Court, Mr. Barnaby, whether or not any of the drums containing this creosote were damaged?

A. A great number were damaged.

Q. Could you give us an estimate of the number of drums which were damaged?

A. Well, from my observation about 25% of the whole cargo was damaged.

Q. About what would that be, providing the cargo was 2753 drums?

A. There was about 700 drums damaged according to my recollection.

Q. What was the extent of the damage to these drums?

A. Why, the drum, the packages were unmerchantable, they were in such a bad state. [232—61]

Q. That is, the drums themselves? A. Yes, sir.

Q. What about the contents of the drums, did you make an examination of that? A. Yes, sir, I did.

Q. What could you say as to the contents of these drums?

A. Well, they were pretty well emptied; very little creosote in the drums.

Q. You have no idea as to the amount of loss of creosote from these drums, have you?

A. No, except that I opened the bungs of many of them. I looked in and I could see that many of them were only a third full; some were half full.

(Testimony of Joseph Robert Barnaby.)

I do not think that there were any that I saw more than half full.

Q. Mr. Barnaby, do you know the number of gallons contained in a full drum of creosote?

A. Yes, sir; 90 Imperial gallons.

Q. What would that be in United States gallons?

A. About 109 to 110.

Q. Do you know the reasonable cost or value of a drum of creosote delivered at Eagle Harbor, that is the empty drum itself?

Mr. McCLANAHAN.—I object on the ground that the witness is not qualified.

A. Yes, because I do a considerable business in the sale of empty drums.

Q. What would be the value of an empty drum delivered at Eagle Harbor?

A. Six to seven dollars apiece.

Q. What is the value of the creosote per gallon delivered [233—62] to Eagle Harbor, taking into consideration the freight, insurance, etc., of carrying the creosote from your plant in England to Eagle Harbor?

A. Do you refer to this particular cargo?

Q. This particular cargo, yes.

A. Eight pence and nine-sixteenths to one penny, English gallon.

Cross-examination.

Q. (Mr. McCLANAHAN.) Mr. Barnaby, what was the c. i. f. value of the drums of creosote in November, 1908, here?

A. That is the same question?

(Testimony of Joseph Robert Barnaby.)

Q. The same.

A. Eight pence nine-sixteenths to one penny, Imperial gallon.

Q. Will you give me the c. i. f. value of the entire package? A. If you multiply by ninety—

Q. Please do so. Give it to us in American money.

A. That will take some figuring.

Q. I will give you paper and lots of time. You can do that, can you not? A. Yes, sir.

Q. Do so.

A. If my recollection is correct that would be \$13.72.

Q. \$13.72 represents the price of one drum of creosote including the package.

A. No, it would be more than that.

Q. Delivered in Seattle. A. \$15.72.

Q. Then I repeat my question. \$15.72 represents the price [234—63] of the drums of creosote, including the package delivered in Seattle in November, 1908?

A. Yes, sir. That is the c. i. f. price, sold in London.

Q. You deal in creosote drums? A. Yes, sir.

Q. What are they used for?

A. They are used for varied purposes. They are used for shipping whale oil back to Europe. For taking distillate from Seattle to Alaska, engine distillate. For taking fuel oil up to Alaskan points, and as containers for carrying oil all over the north-west.

Q. There is a market here for them?

(Testimony of Joseph Robert Barnaby.)

A. Yes, there is a good market for them.

Q. Do you know what became of these 700-odd drums that were taken out of the "Sardhana" damaged?

A. I do not know what became of them. I do not think anyone would buy them.

Q. I did not ask you that question. You do not know what became of them? A. No.

Q. Do not know where they are now? A. No.

Redirect Examination.

Q. (Mr. BOGLE.) In testifying as to the c. i. f. value, were you testifying as the value of this particular shipment?

A. Yes, sir, of that particular shipment sold in London at the time.

(Testimony of witness closed.) [235—64]

Afternoon session, Feb. 21, 1913.

PRESENT: Mr. BOGLE, for the Libelant.

Mr. McCLANAHAN, for the Respondent.

Mr. BOGLE.—I offer in evidence a certified copy of the protest.

Mr. McCLANAHAN.—We will admit it is a certified copy.

Paper marked Libelant's Exhibit "L," filed and returned herewith.

[**Testimony of A. M. Beckett, for Libelant.**]

A. M. BECKETT, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. BOGLE.) What is your business?

A. Average adjuster.

(Testimony of A. M. Beckett.)

Q. How long have you been engaged in that business? A. Since 1897.

Q. With what firm are you at present connected?

A. Johnson & Higgins, of Washington.

Q. How long have you been connected with them?

A. With Johnson & Higgins and Johnson-Higgins of Washington, since September, 1911.

Q. Johnson & Higgins of Washington is the successor of the partnership of Johnson & Higgins?

A. Yes, sir.

Q. Practically the same firm. Prior to that time what business were you engaged in?

A. Average adjusting.

Q. And with what firms were you connected and where?

A. F. C. Dawson & Co. of Liverpool, England, and Manley Hopkins' Son & Corliss of London and Liverpool, England. [236—65]

Q. Mr. Beckett, in your experience as an average adjuster, have you adjusted any cases where the policy of insurance reads as follows or substantially as follows: "Warranted free from particular average, unless the vessel or craft or the interest insured be stranded, sunk or on fire"? A. Yes, sir.

Q. Mr. Beckett, I wish you would state what the practice of English and American adjusters is as to that clause contained in a policy of marine insurance, what construction they place upon that clause?

Mr. McCLANAHAN.—I object as immaterial.

Q. That is, what loss would open up that warranty?

(Testimony of A. M. Beckett.)

Mr. McCLANAHAN.—I object as immaterial and on the ground that the question calls for a conclusion of law, and the witness is not qualified.

A. Under clauses such as you have read, containing the words “on fire,” it is the practice of the adjusters in England to consider the warranty open, if some structural part of the vessel has been actually on fire.

Q. Does it depend upon the extent of the fire, or the fact that some part of the structure has been on fire?

Mr. McCLANAHAN.—I renew my last objection.

A. It depends on the fact that the structure has been on fire, but not the extent of the fire.

Q. Mr. Beckett, can you give us any idea of the number of cases that you have adjusted with that clause in the insurance policy?

A. It is impossible, but a considerable amount.

Q. Has that construction of that policy, as far as you know, coming within your own personal knowledge, ever been contested [237—66] by the marine insurance underwriters?

Mr. McCLANAHAN.—I object as immaterial.

A. As far as I know it never has.

Q. Mr. Beckett, do the English adjusters place any different construction upon a warranty which contains the word “burned” alone than they do that contains in the warranty the words “burned or on fire”?

Mr. McCLANAHAN.—I renew my last objection.

A. The construction placed is that the “on fire,”

(Testimony of A. M. Beckett.)

the opening of the warranty where the words "on fire" that is not a fire loss—than where the words "burned" only are used.

Q. Do you know when the words "on fire" were first added to these warranties in marine insurance policies in England?

A. Subsequent to the Glenlivet case, which was decided about 1893.

Q. Mr. Beckett, under the practice of the English adjusters, according to your testimony, not contested, or has not been contested to your knowledge by marine underwriters, would you consider that the burning of the door which was built into the bulk-head of the vessel, would be a burning of the structure?

Mr. McCLANAHAN.—I object on the same grounds.

A. I consider that would open the warranty.

(Question read to witness.)

A. Yes, sir.

Cross-examination.

Q. (Mr. McCLANAHAN.) Mr. Beckett, you say that the use of the words "on fire" first occurred after the decision in the Glenlivet case? [238—67]

A. To the best of my knowledge and belief that is so.

Q. Where were you when the Glenlivet case was decided?

A. I was at school, unconnected with average adjusting.

Q. What did you know about the Glenlivet case



(Testimony of A. M. Beckett.)

at the time of its decision?     A. Nothing.

Q. What did you know at the time of the decision of the Glenlivet case about the practice of underwriters being controlled or regulated or governed by the Glenlivet case?

A. Nothing; but these things are covered by text-books.

Q. So your knowledge comes from text-books, does it?     A. Prior to 1897.

Q. Your knowledge as to the substitution of the words "on fire" for the word "burned," does that come from the text-books?

A. Yes, that is covered by the text-books and also from common knowledge common to adjusting offices.

Q. Knowledge of insurance policies?

A. Yes, sir.

Q. You have such knowledge, have you?

A. Yes, sir.

Q. Are you familiar with Gow on insurance?

A. Yes, sir.

Q. That is a text-book, is it not?     A. Yes, sir.

Q. Well recognized?     A. Yes, sir.

Q. Are you familiar with Mr. Gow's construction of the expression "on fire" as contradistinguished from the expression "burned"? [239—68]

A. I think he says as I have given in my previous testimony.

Q. Gow, then, agrees with you, that the two terms are different.

A. Yes, I think Gow says that they are different.

(Testimony of A. M. Beckett.)

Q. That this expression "on fire" in modern policies is substituted for the expression "burned"?

A. No, it is included that way. "Burned" has not been left out of the clause, but "on fire" has been added.

Q. Have not you found policies with both "burned" and "on fire" in them?

A. Nearly all that have "on fire" have "burned" in as well.

Q. How would the f. p. a. clause read?

A. Warranted f. p. a. unless stranded, sunk, burned, on fire, or in collision.

Q. Have you seen the policies in suit in this case?

A. No.

Q. I hand you exhibit "A" of the libelant. Please examine that and you will see that the memorandum attached to the side of the policy has the expression "on fire" and nothing more, and that the body has the expression "burnt," and nothing more?

A. Yes, sir.

Q. Now, will you please tell me, Mr. Beckett, who does that placing on the margin of the policy of the memorandum that you find there? As a rule, does not the broker place it there?

A. The broker or the company.

Q. If that was placed there by the company, their printed forms have "burnt" in the body of the policy, don't you [240—69] think they would still place on the memorandum pasted on the side a clause that was harmonious with the body of the policy?

(Testimony of A. M. Beckett.)

A. No, sir, because the assured would not accept it.

Q. The assured would not accept it?

A. No, sir.

Q. You mean to say, then, that the assured has forced the insurance companies to the use of the expression "on fire"?

A. That is rather strong wording to use. It has become the general practice to put it in. I would not say that the assured has forced them to.

Q. Well, it is against the interest of the company, is it not, to use the expression "on fire," rather than "burnt," since the decision in the Glenlivet case?

A. Yes, sir.

Q. Can you explain how, then, a company would in the body of their policy use the expression "burnt," and then on that printed pasted slip use the expression "on fire"?

A. The printing in the body of the policy is an old form. If the assured wants better risks that are not covered in the body of the policy, they are given him by attaching the slip.

Q. Does he pay an additional premium where he has this slip pasted on the side, where the expression is "on fire," than if he had the expression in it "burnt"?

A. That is a matter which is purely a matter of arrangement between him and the company, about which I do not know, as an adjuster I would not know that.

Q. Have you in mind any particular adjustment

(Testimony of A. M. Beckett.)

that you [241—70] have made where there was a fire, which opened the policy, and there was no contest over it, and where the expression was “on fire” in the policy?

A. Yes, one I made up here recently.

Q. On this coast?

A. Yes, sir. Claims were paid according to the English law and practice, that was the condition of the policy.

Q. Suppose there should be a blaze in the structure of a ship, that was extinguished with a thimble-full of water, would you say the ship was on fire within the meaning and practice of adjusters?

A. I think that is a rather hypothetical question.

A. It is a hypothetical question.

Q. To what extent, might I ask the question, sir, to what extent was the vessel on fire?

A. To no material extent. Absolutely no damage, and yet there was a blaze in the structure of the ship that could be extinguished with a thimble-full of water.

Mr. BOGLE.—I object; there is no testimony like that in this case.

Q. In your opinion, would the ship be on fire within the meaning of that warranty?

A. It depends entirely, the question being the structure of the ship itself, if the ship itself, if the structure of the ship itself was on fire.

Q. That is included in my hypothetical question, the structure.

(Testimony of A. M. Beckett.)

A. It could not be put out with a thimblefull of water.

Q. Why not?      A. How could it be? [242—71]

Q. If I should light a match to a beam of a ship, that would be a part of the structure, would it not?

A. Well—

Q. That happened to be saturated with creosote to the extent of a drop, the beam would be on fire when I lit it, would it not?

A. No, the creosote would be on fire. The beam would not burn for some appreciable time.

Q. Let us confine it so that the beam is on fire within an area that could be extinguished by a thimble-full of water, is the ship on fire?

Mr. BOGLE.—I object to this line of examination on the ground that it is not based on any facts in this case.

A. That is a case that we never met, to my knowledge.

Q. I am trying to find out the limit. You say that any structural part of the ship being on fire opens the warranty; is that correct?

A. As far as I know, that every case where the structural part of the vessel has been on fire, the warrant has been considered open.

Q. Now, is not this the better practice, the practice which prevails, that where there has been material damage to the ship, say the structural part of the ship, by the fire, the warranty is open?

Mr. BOGLE.—I object to the form of the question. This witness is not testifying as to what would be

(Testimony of A. M. Beckett.)

the better practice. He is testifying what the practice is which is accepted and acknowledged by the English adjusters and underwriters. It is immaterial.

A. I do not think it is for me to decide which is the [243—72] better practice.

Q. Is not that the practice? A. No.

Q. Do you mean to say that any fire of any material part of the ship opens the warranty, no matter how minute the fire is?

A. The practice is defined to the structural part of the vessel being on fire.

Q. Can you answer my question yes or no, and then make your explanation. Do you mean to say that it is the practice that the warranty is opened where any part of the structural part of the ship is on fire, no matter how minute the fire is?

A. To the best of my knowledge and belief, yes.

Q. Now, will you tell me a case that has come within your knowledge, where there has been a trifling fire, doing absolutely no damage to the structural part of the ship, and yet the structural part of the ship has been on fire, where the warranty has been opened by the adjuster?

A. That is impossible. If the structural part of the ship has been on fire there must have been damage to it.

Q. Then your understanding is that there must be damage before the warranty can be opened by a fire? A. There cannot be a fire without damage.

Q. That is your understanding, then, that there

(Testimony of A. M. Beckett.)

must be damage before the warranty is opened?

A. I said the structural part of the ship must be on fire.

Q. That is true. Now, I ask you if you do not mean that [244—73] there must be damage?

A. I conclude if there is a fire there must be damage.

Q. And if there is no damage and yet there is a fire, then the warranty is not opened?

A. No, that is impossible.

Q. It is impossible. What?

A. To have something on fire and not be damaged.

Q. It is impossible, is it? What do you mean by damage as used in that connection?

A. Wood charred.

Q. Damage is something that lessens the efficiency or use of a thing, is it not? A. Well—

Q. You do not mean damaged ethically, do you, the beauty of it spoiled, you mean the use, don't you?

A. Yes, or anything that needed repainting, possibly that might be.

Q. Repainting, would that cover it?

A. If the paint was blistered off.

Q. Would you say that the practice is, that if there is blistered paint, that the warranty is opened?

Mr. BOGGLE.—I object to this. I think the witness stated very clearly what the practice is.

A. Mere blistering of paint I should not consider the warranty opened.

Q. So that your illustration was not apt, was it? You gave that as an illustration, as some damage

(Testimony of A. M. Beckett.)

caused by fire which would require repair. Suppose that one of the timbers of a ship be charred within the radius of a foot, just charred, so that you could take a [245—74] knife and scrape the charred embers off very easily, would you consider that that ship was damaged by fire? A. Yes, sir.

Q. You would. This question has never been decided, to your knowledge, by any court of law?

A. No.

Q. And you think after the decision of the Glenlivet case the Insurance Companies immediately changed their policies do you to "on fire"?

A. Yes, because the assured wanted better protection.

Q. You have never been in the insurance business?

A. Not until I was connected with Johnson & Higgins.

Q. How long have you been connected with them?

A. Eighteen months.

Q. Has your knowledge of Marine insurance been acquired since then? A. What I have.

Q. Practical knowledge.

A. It is very superficial, though.

Q. And has your knowledge of the dealings between the assured and the Insurance company been acquired since then? A. In what way?

Q. In any way. You said that the assured was the man that wanted better protection was the reason the expression was changed. Now, I say, has your knowledge of that been acquired since you have been with Johnson & Higgins?



(Testimony of A. M. Beckett.)

A. I don't quite get your question.

(Question read to witness.)

A. In this particular, do you mean? [246—75]

Q. Yes, sir.

A. It is common knowledge that it is the assured that wants it, not the company, and he is willing to pay for it.

Q. I am not asking you about that.

A. About the change "on fire"?

Q. I ask you about when you acquired this knowledge. A. About the change of "on fire"?

Q. About this requirement of the assured that he be given a policy with "on fire" in it rather than "burnt." When did you acquire that knowledge?

A. I cannot state the year and month I acquired it.

Q. Have you acquired it since you were with Johnson & Higgins?

A. It is common knowledge to anybody in business.

Q. It is not common knowledge, if you will allow me to contradict you, because I am in the Marine Insurance business in a way, and I never heard of it before, and I have been in it a good many years, so it is not common knowledge. Now, when did you acquire it? A. Oh, several years ago, anyhow.

Q. Before you went with Johnson & Higgins?

A. Yes, sir.

Q. In what way did you acquire it, what was your business? A. As an average adjuster.

Q. How did you acquire it and from where?

(Testimony of A. M. Beckett.)

A. As I say it is common knowledge.

Q. I would like to have, Mr. Beckett, some special, particular case in which you have been interested, where there was a trifling fire, that was conceded by both the Insurance company and the assured, to open that [247—76] warranty. A fire that did no material damage to the structure of the ship?

A. What do you call a material damage?

Q. Well, I will leave that out. You think that a material damage is anything that requires a dab of paint. I don't agree with you. We will leave that out. Give me the most trifling fire, in your own experience, that would open that warranty by the common consent of the assured and the underwriter. And I am going to ask for the details of it, if you will please give them.

A. It is hard to remember them.

Q. Take your time, we have all of that that we need.

A. I cannot remember back over thirteen years. The most trifling that I can at the moment think of, was the one I referred to a few minutes ago as being adjusted here.

Q. How long ago?

A. The fire occurred in January, 1912.

Q. What was the name of the ship?

A. The "Watson."

Q. What was the fire?

A. A fire in the linen locker.

Q. What was the extent of it?

A. I think about between three and four hundred

(Testimony of A. M. Beckett.)

dollars to the structure of the ship, and about four hundred dollars worth of linen burned.

Q. What insurance companies was that in?

A. In some American companies and some English companies. I cannot remember without the adjustment schedule what they were. [248—77]

Q. That is the most trivial fire that you can recollect? A. At the moment, yes.

Q. I want you to take plenty of time. You think with time that you could refresh your memory?

A. No, because it is of no interest to me at the time, after the case is once done and adjusted, whether the fire is big or small.

Q. Let it stand, then, that that is the most trivial fire that you recollect that opened the warranty. Is that all right? A. Yes, sir.

Q. And you have had how much experience, how many years? A. Thirteen years.

Q. Now, aside from your own experience, will you give us a case of the most trivial fire that ever opened a warranty where the expression in the policy was "on fire," and was conceded by both parties to have opened the warranty? I am not speaking of your own experience, but of your knowledge as an adjuster?

A. That is more or less confined to the adjustments that I have made up.

Q. So that you have no knowledge of any other fire that might be called a trivial fire, that has opened the warranty, than that which you have just stated?

A. No, I have no means of hearing of them.

(Testimony of A. M. Beckett.)

Q. Well, let us go a step farther. Give me another illustration of the next most trivial fire that has come within your own experience that has by consent opened the warranty where the expression was "on fire"?

A. I cannot quote you chapter and verse. [249—78]

Q. Haven't you any recollection of any adjustments made on fire losses on ships?

A. Yes, on damage.

Q. Where it is a particular average claim?

A. Yes, damage to cargo, but I cannot give you the names of the vessels, for I have adjusted many of them.

Q. Of course, in all these cases the fire has been quite considerable, has it not?

A. The fire itself in the cotton. Very often the damage to the ship is very trivial.

Q. I want an illustration other than the one given, where there has been a trivial fire to the ship.

A. I cannot get the names of the vessels, but I have adjusted a number in years past.

Q. Leave out the names of the vessels and tell me the circumstances of one adjustment where the structural loss was trivial.

A. If I could tell you the exact circumstances I could tell you the names.

Q. So you are unable then to give any other case where there was a trivial fire that opened the f. p. a. warranty?

A. I say I cannot give the chapter and verse, but

(Testimony of A. M. Beckett.)

I have adjusted several, I might say many, in damaged cotton.

Q. What has that to do with the f. p. a. clause?

A. That is insured.

Q. But the fire must be in the ship itself, not in the cotton?

A. But a majority of the cotton fires the fire is in the cotton and the cotton is in the ship. [250—79]

Q. But the warranty is not opened unless the structure of the ship is on fire? A. Sure.

Q. Cannot you remember any cases where the structure of the ship was on fire?

A. I cannot quote you the exact circumstance of the damage but there are—the “*Mechanicien*” was one.

Q. Is that the name of the ship? A. Yes, sir.

Q. What was the damage to the ship in that case?

A. As far as I remember, it was principally consisted of paint blistered off the inside of the hull.

Q. Paint blistered off the inside of the hull.

A. Yes, through the plates having been red hot.

Q. Is that all? And in your judgment that was fire in the structure of the ship?

A. Yes, sir, and the underwriters paid the loss.

Q. What was the damage resulting from that fire to the structure of the ship, how much damage?

A. I haven't any knowledge. I was not adjusting the loss of the ship, I was adjusting the loss on certain cotton.

Q. You haven't any knowledge of the damage done to the ship?

(Testimony of A. M. Beckett.)

A. It was immaterial to my adjustment.

Q. You haven't any knowledge of it. It was considerable was it not? A. I should say not.

Q. What did it consist of, simply the paint?

A. As far as I know. Might not have been.

[251—80]

Q. Mr. Beckett, this Watson case was a fire damage, was it not, the entire damage?

A. No—that does not matter.

Q. Answer the question. It was simply a fire damage? A. Fire damage.

Q. No question of cargo insurance? A. No.

#### Redirect Examination.

Q. (Mr. BOGLE.) Does the fact that it was purely a fire damage make any difference in the construction of this clause?

A. Absolutely none under the policies.

Q. Mr. Beckett, in the case to which you refer, where the sole damage to the structure was the heating of the iron, could that have caused any considerable damage to the iron structure?

A. It might or might not buckle the plates. Depends on the amount of heat.

Q. The greatest damage that it could do would be to buckle the plates? A. Yes, sir.

Q. In your business of adjuster, has it been confined to Marine adjusting? A. Entirely.

Q. Is it not true that the business of marine adjusting requires more or less knowledge of marine insurance? Are you not brought in contact with

(Testimony of A. M. Beckett.)

marine insurance in making up adjustments and losses? A. Yes, sir. [252—81]

Q. And are brought more or less in contact with underwriters and cargo owners? A. Yes, sir.

Q. Where you would have an opportunity to gain a knowledge of the facts of which you testified as being facts? A. Yes, sir.

Mr. McCLANAHAN.—I object to this line of re-direct examination as being leading and not proper re-direct examination.

Q. Mr. Beckett, in the construction of this clause, is it material as to what the extent of damage is, or is the material point in opening up the policy the fact there was a fire in the structure of the vessel?

Mr. McCLANAHAN.—I object as not proper re-direct examination.

A. The point is whether the structure has been on fire.

Q. Counsel has referred you to Gow on insurance, marine insurance. Do you know who Mr. William Gow is, the author of that work? A. Yes, sir.

Q. Who is he?

A. He is now secretary of the British Foreign Marine Insurance company of Liverpool.

Q. He is a representative of the underwriters?

A. Yes, sir.

Q. (Mr. McCLANAHAN.) What was he when he wrote his book?

A. An underwriter of the London Marine Insurance company of Liverpool.

Q. He is considered an authority, is he not?

(Testimony of A. M. Beckett.)

A. Yes, sir.

Q. On marine insurance?

A. Elementary authority, that is as far as the elementary [253—82] text-books go. He does not rank with McArthur and some authorities.

Q. (Mr. BOGLE.) I hand you this document, and ask you if that is the signature of Mr. Gerald Low?

A. To the best of my knowledge and belief it is.

Q. Have you had an opportunity of seeing any number of his signatures so that you would know if that was his signature?

A. Yes, there are many of his signatures on our office files.

Q. I will ask you to look over that document and tell me what it is.

A. That is an adjustment for loss and damage to creosote.

Q. What vessel? A. By the "Sardhana."

Mr. BOGLE.—I offer this paper in evidence.

Paper marked Libellant's Exhibit "M," filed and returned herewith.

(Testimony of witness closed.)

Mr. McCLANAHAN.—It is stipulated by the parties to this action that the Court may take judicial notice of the case of the *Glenlevit*, reported in 7 *Aspinwall*, pp. 342 and 395, as being the law of England governing the facts presented in that case. The latter case being the decision of the Court of Appeal of England.

Mr. McCLANAHAN.—I understand, Mr. Bogel, that your case is now closed, with the exception of



(Testimony of A. M. Beckett.)

the depositions of Fred D. Beale and M. I. Helman. The deposition of [254—83] Mr. Beale to be taken in Portland.

Mr. BOGLE.—That is our case unless we find it necessary to take some rebuttal testimony.

Mr. McCLANAHAN.—That can be determined to-day.

Mr. BOGLE.—I think so. [255—84]

Seattle, February 20, 1913.

PRESENT: Mr. BOGLE, for the Libelant.

Mr. McCLANAHAN, for the Respondent.

#### RESPONDENT'S TESTIMONY.

[**Testimony of H. C. H. Tuttle, for Respondent.**]

H. C. H. TUTTLE, a witness, called on behalf of the respondent, being duly sworn, testified as follows:

Q. (Mr. McCLANAHAN.) You live in Seattle?

A. Yes, sir.

Q. What was your occupation in November, 1908?

A. Running a donkey-engine for the Washington Stevedoring Company at Eagle Harbor at that time.

Q. Do you remember at that time working on the bark "Sardhana"?

A. Yes, sir.

Q. Where was she lying at that time?

A. Well, she was lying—

Q. At Eagle Harbor?

A. In Eagle Harbor, yes, sir.

Q. Where was your donkey-engine?

A. Tied alongside of the ship.

Q. On what side?

(Testimony of H. C. H. Tuttle.)

A. On the offshore side, the way the ship laid.

Q. Would that be to port or starboard side?

A. That part I don't remember so well.

Q. It would be the offshore side, the weather side?

A. I could always look right out and see Magnolia bluff.

Q. Do you remember at the time of working out there, the incident of the capsizing of the lighter of creosote drums? Do you remember the fact of such capsizing taking [256—85] place?

A. I remember seeing the scow turned upside down.

Q. You were working there, were you?

A. Yes, sir.

Q. On what side of the ship was that scow which capsized, moored? On the side you were on or on the other side? A. On the opposite side.

Q. That would be the lee side, would it?

A. I am not much of a mariner.

Q. It is the inshore side? A. Yes, sir.

Q. That is between the exposed bay, the way the ship lay, the ship and you were between the scow and the weather? A. Yes, sir.

Q. When you saw the scow was it upright in the water or capsized, turned over?

A. It was turned over, yes.

Q. Do you know what capsized that scow?

A. Well, no, I cannot say that I know that any more than we left it loaded with drums, that is all I know.

Q. On the occasion of the scow capsizing, did any

(Testimony of H. C. H. Tuttle.)

mishap happen to your scow on which the donkey-engine was? A. No, sir.

Q. How large was your donkey-engine scow?

A. Well, I could not say the number of feet, I never measured it. It probably would be twenty feet wide and 28 or 29 feet long.

Q. What freeboard would it have?

A. Oh, it would have all the way from 22 to 26 inches.

Q. What was on the scow that you operated?  
[257—86]

A. An ordinary donkey-engine and a few tools, and had two side bins for coal.

Q. You had a boiler on there?

A. Oh, yes, of course.

Q. How high did the boiler and engine extend above the deck of the scow?

A. Well, the ordinary boiler itself runs, when it sets on skids, runs about seven feet above, maybe an inch one way or the other.

Q. Mr. Tuttle, as the lighter lay on which the creosote was loaded on the occasion when the scow capsized, was that lighter exposed to any wind or sea?

A. You mean the one with the drums on?

Q. Yes.

A. No. It was not exposed near as much as the scow I had. It was out of the weather, the weather had to hit the ship first.

Q. Do you remember at this time when a fire occurred aboard the "Sardhana"?

(Testimony of H. C. H. Tuttle.)

A. I remember of a fire occurring on there, yes, sir.

Q. Did you at the time or subsequently have occasion to visit the scene of the fire on the ship?

A. Why, the next noon; me running the donkey, of course I did not run up there in the morning. But at noon I went and took an observation. It didn't look to me as though—

Mr. BOGGLE.—I object, you have answered the question.

A. I saw it the next noon.

Q. What was the character of the fire as you saw it, or the results of it?

A. It looked to me very slight. I only saw a door and saw [258—87] the timbers smudged a little, that is all.

Q. Where were the timbers?

A. Just the ordinary props, that props the ship up. I don't know; I never worked aboard a ship and I cannot tell exactly.

Q. Mr. Tuttle, have you recently seen this door which you say was burned as the result of the fire?

A. I saw a door that looks very much similar to it; I would pretty near swear it was the same door.

Q. When did you see that door?

A. Up in the postoffice basement.

Q. When? A. This noon.

Mr. BOGGLE.—We will not dispute but what that is the door.

Mr. McCLANAHAN.—It is admitted that the witness has seen the door.

(Testimony of H. C. H. Tuttle.)

Q. Have you ever had occasion, in firing your donkey-engine, to use dunnage from a vessel that has carried creosote? A. Yes, sir.

Q. What is the nature of such wood when used as fuel, how inflammatory is it?

A. Very inflammatory, carries a great many units of heat. We can only use one stick at a time if the steam is up. If you put in two sticks it will just tear things. Two ordinary cordwood chunks will make the pop go and you will have to have the injector going and the door wide open and run the engine to beat the band. Never was able to use but one ordinary stick at a time, and that would last when you were hoisting every minute, for 15 or 20 minutes. [259—88]

Q. Would it be long or a short time in catching fire? A. Oh, instantly.

Q. That has been your experience, has it?

A. Yes, sir.

Q. With dunnage saturated with creosote?

A. Yes, sir.

Cross-examination.

Q. (Mr. BOGLE.) What do you mean by dunnage, Mr. Tuttle?

A. Well, dunnage is anything they put in between the cargo. As I have had occasion to use it as it was taken out. They used it to put in between to keep the cargo from getting bruised or spoiled, and they put dunnage underneath. They had dunnage between the drums to hold it in position so that they did not get damaged.

(Testimony of H. C. H. Tuttle.)

Q. Do you know at what temperature—or what do you know of creosote as combustible?

A. Well, no, I don't, I never had that analyzed or anything like that, but I know you just take the ordinary stick with creosote and it goes just like that when you lay it on a fire.

Q. (McCLANAHAN.) You are speaking of dunnage?

A. Yes, that that is soaked with creosote from the ordinary voyage.

Q. (Mr. BOGLE.) Do you know anything about this fire? Do you know that it occurred?

A. When the fire occurred?

Q. Yes, sir.

A. At the time the fire occurred I was abed, in Newlin's house, probably 1600 feet from there. It was around 9 [260—89] o'clock, along there, between half-past eight and nine. I heard the hollering going on down there on the bay, and heard the bell ringing, and we went down and got in a boat to go over and then I heard them say, no use, it is all out. So the next day at noon time I had occasion to notice it, is all.

Mr. BOGLE.—I move to strike that portion of the answer as hearsay, where he states, "No use, it is all out."

Q. You did not go down to the fire that night?

A. No, sir.

Q. What was this bell you heard ringing?

A. It was the ordinary bell they ring for the time aboard ship.

(Testimony of H. C. H. Tuttle.)

Q. Did you know what the bell was, when you heard it, what it was ringing for?

A. I think there is a bell around the creosote plant. I think, if I remember right, they were ringing that to attract attention. There were two bells going. I remember that distinctly; one was louder than the other.

Q. Do you know when the second bell started to ring, how long after the first one?

A. I just had time—

Q. About how long?

A. It did not seem to me as though it was over—I could not say; it might be forty-five seconds or it might be a minute and a half.

Q. You think then forty-five seconds or a minute and a half after the bell rang on the ship, that the bell of the creosote plant was ringing?

A. There was another bell ringing right away afterwards. [261—90]

Q. What time of night was this, Mr. Tuttle?

A. Well, I should judge half-past eight or nine, somewhere in there; I had just got into bed.

Q. Did you get out of bed?      A. Oh, yes.

Q. Did you get dressed?

A. Yes, and came down to the water's edge going to take a rowboat.

Q. Did you get the rowboat?

A. We got to the rowboat.

Q. Where was the rowboat?

A. Tied up to a little float that is there. There is a float back there where there is a road that goes

(Testimony of H. C. H. Tuttle.)

back into the country, I don't know just what dock they call it, but it is about the only floating dock there is over there, it runs up by Yuen's house towards the Blakely road.

Q. You untied the rope, did you?

A. No, I don't know whether I untied the rope. I know we were ready to get in the boat.

Q. Did you get the oars?

A. We always had the oars; we used to cache them under some willows. Joe went up to get them.

Q. Had you gotten in the boat and started off?

A. No.

Q. Did he return with the oars?

A. I don't remember that part of it so much. I know we were satisfied and remarked about it and started back.

Q. Quite a little commotion around was there?

A. Well, of course I could hear noise and one thing or other [262—91] aboard ship and people away over along the shore. I could not tell exactly the words.

Q. Do you know whether any one went aboard ship to assist them in putting out the fire?

A. I don't know exactly about that any more than I heard remarks afterwards, you know.

Q. Do you know whether any chemical fire-extinguishers that belonged to the company were used to assist in putting out the fire?

A. I don't know about that.

Q. Where was the "Sardhana" anchored?

A. She was anchored not very far from the dock.



(Testimony of H. C. H. Tuttle.)

Q. About how far?

A. Well, I don't know; about between three and four hundred feet, somewhere around there. I don't remember the number of feet. It was only a little bit to row, did not amount to anything.

Q. How far was the house where you were sleeping from the ship?

A. From the house to the ship, I don't know. It might be probably 1600 or 1800 feet.

Q. How far was it from the house to the place where the rowboat was tied up?

A. Well, that is a different line. I was figuring on an air line to the ship.

Q. I want to find how far from the house the rowboat was that you went to?

A. I don't know, just an ordinary block from there, two or three hundred feet.

Q. From there to the rowboat? [263—92]

A. Yes, sir. It is right along the bank, the house only sets back up a little ways.

Q. Mr. Tuttle, where was this door located which was burned on the ship, I mean?

A. It was down in underneath, some door, I believe, they used for stowing some ship's goods or something; I don't know exactly. There was a door there, I know that.

Q. You did not see it until the next noon.

A. No, I just took an ordinary glance at it. The fire didn't look only slight to me.

Q. Did the door go into the wall, the bulkhead of the ship?

(Testimony of H. C. H. Tuttle.)

A. It looked to me as though, standing up this way.

Q. Was it not built into the bulkhead the same as an ordinary door built into the side of this wall?

A. If I remember right, hanging in the same way, something like that; I am not sure.

Q. Was there anything else burned beside the door?

A. Well, there was just the ordinary frame around there scorched something like the door.

Q. You mean the sides of the wall?

A. Yes, sir, the sides of the bulkhead, whatever it was there.

Q. For how great a distance was it burned, Mr. Tuttle?

A. Well, that part of it I did not take such awful good observation of it.

Q. Was the ceiling scorched or burned?

A. The ceiling looked more smoked to me than scorched.

Q. Did you examine it?

A. With my hands, no. It just looked ordinarily dirty and smoked. [264—93]

Q. You have seen this door and know the extent of the burning? A. Yes, I saw that.

Q. And the bulkhead was about the same?

A. Yes.

Q. Mr. Tuttle, what was the size of the scow upon which the drums of creosote were loaded, the scow which capsized?

A. I don't know exactly. I should judge it was

(Testimony of H. C. H. Tuttle.)

about, if I remember rightly, it was 32 to 36 feet wide and maybe about 60 feet long, something like that.

Q. And you were engaged in unloading these drums over the side of the ship on to this scow.

A. Yes, sir.

Q. Who had charge of the loading on this scow?

A. Well, the foreman was taking out the drums.

Q. Who was that? A. Joe Preece.

Q. Did the Washington Stevedoring Company have a contract to unload them?

A. He was working for them.

Q. Did they furnish the scow?

A. I don't think so.

Q. How many days had they been working unloading the cargo before this 18th of November, the day on which this scow capsized?

A. I don't remember that so well, but it seemed to me toward the middle of the unloading of it, if I remember right.

Q. Do you know how many drums of creosote were upon the scow at the time of the capsizing? [265—94]

A. I don't remember that precisely, but I think it was very close to being loaded.

Q. Did they tow her to the dock of the creosote company that night? A. No.

Q. Would they not have done that if she had been fully loaded?

A. There is lots of times they left the scows there loaded for a day or two.

(Testimony of H. C. H. Tuttle.)

Q. Fully loaded? A. Yes, sir.

Q. Out in the bay?

A. They would move them up sometimes alongside the ship forward and move them around and moor them.

Q. Loading more than one scow at a time?

A. No, only one scow at a time is all they handled loading.

Q. When did you leave the ship on the night the scow capsized? A. I ordinarily left—

Q. When, what time?

A. Just as it was getting dark, you know, we used to quit.

Q. Did the scow capsize during the night or day?

A. During the night.

Q. How was the "Sardhana" anchored in the harbor on this night?

A. If I remember right, she was anchored forward.

Q. Are you sure she was moored aft?

A. I feel pretty sure, but my memory is not so clear on it. I think she was moored aft and anchored forward.

Q. You don't know that. You don't want to swear to that?

Mr. McCLANAHAN.—I think he has made it clear.

A. That is as far as I remember. [266—95]

Q. I think you stated that you did not know.

A. I feel pretty sure that is the way it was, but I would not swear to it.

(Testimony of H. C. H. Tuttle.)

Q. Which way was the "Sardhana" lying?

A. She was lying on the north side but in the bay.

Q. In the bay. A. Well, she was—

Q. Was the bark headed out toward the mouth of the bay?

A. Her nose was pointing toward Winslow, and as she lay there I am pretty sure her aft end was moored in order to hold her tight.

Q. Did you keep a watchman aboard the scow?

A. We gave the watchman on the ship an extra compensation when she is tied that way, to watch the donkey scow.

Q. Both scows were lashed to the ship, were they?

A. Oh, yes.

Q. You do not know anything about the condition of the weather on that night, do you, the night the scow capsized?

A. I don't exactly know, but I think it was pretty windy, pretty rough, if I remember right; it has been so long ago. I think it was pretty windy.

Q. Did you testify as to why she capsized?

A. No, I cannot do that.

#### Redirect Examination.

Q. (Mr. McCLANAHAN.) Do you know what a bulkhead is?

A. A bulkhead in a ship, as I understand, is a big frame proposition, that is all I know about it.

Q. Do you know where it is located in the ship, or where it [267—96] can be located?

A. No, I don't say that I can, exactly.

Q. You said on cross-examination that the bulk-

(Testimony of H. C. H. Tuttle.)

head had been burned the same as this door that you saw downstairs?

A. This framework around the door, whatever it was, if I remember right, was scorched in a similar condition to the door.

Q. Do you draw a distinction between scorching and burning?

A. Some of it just ordinary as if the heat was strong on it, that is all; it was not cleanly put out of commission entirely—plenty of strength left in the wood.

Q. If the bulkhead that was referred to by counsel extended from one side of the ship to the other, do you mean to convey the idea that all that space of wood had been burned as the door was?

A. Oh, no, a little ways, just a little bit, mostly on the right hand looking to the door.

Q. (Mr. BOGLE.) What do you mean by a little bit?

A. The heat seemed to be more to that side of the door like than it was to the other side, that is all. It seemed to be one little spot. Knowing the way the dunnage lights up in the boiler. I never gave it a second look, for if it had got in the dunnage they never would have had any ship—that would have been all there was to it.

Q. If this fire had reached the creosote there would have been a very serious conflagration?

A. I guess there would.

Q. (Mr. McCLANAHAN.) You were describing the extent or area [268—97] of the fire under

(Testimony of H. C. H. Tuttle.)

your recross-examination, and you gave your arms a space of two and a half or three feet. Was that intended to indicate the area of the fire?

A. The way it looked to me as though it did not amount to only a little bit.

Q. Is that the idea of the extent of the fire, two or three feet?

A. Just a little small space, that is the way it looked to me.

Q. (Mr. BOGLE). Do you mean to swear, Mr. Tuttle, that the fire did not extend more than three feet in length along the bulkhead?

A. That is the way it looked to me.

Q. Is that both sides or one side?

A. It seemed to be most on one side of the door.

Q. How about the left-hand side—what was the extent of the fire on that side of the bulkhead?

A. Did not seem to be any to amount to anything.

Q. Do you intend to swear there was no burning on the left side of the door?

A. I did not notice any.

Q. (Mr. McCLANAHAN.) Do you mean to say there was any burning on the right-hand side of the door? A. It looked that way.

Q. You have seen the door, have you?

A. Yes, sir.

Q. Do you remember, when you looked at the door, that there was an unburned space on the right-hand side of the door? [269—98]

Mr. BOGLE.—I object to counsel leading the witness.

(Testimony of H. C. H. Tuttle.)

A. Well, there is a burned space there somewhere, but I don't remember.

Q. Let me ask you this: If this fire was indicated as having burned in more than one place?

A. Did not look that way to me.

(Testimony of witness closed.) [270—99]

**[Testimony of Capt. David Baird, for Respondent.]**

Capt. DAVID BAIRD, a witness, called on behalf of the respondent, being duly sworn, testified as follows:

Q. (Mr. McCLANAHAN.) Have you ever been a seafaring man, Captain? A. Yes, sir.

Q. How long have you seen sea service?

A. Thirty-three years.

Q. What was your occupation in November, 1908?

A. I was Marine Superintendent in Seattle for Andrew Weir & Co.

Q. Who was the owner at that time of the bark "Sardhana"? A. Andrew Weir & Company.

Q. What were your duties with reference to the "Sardhana" when she was loading here in November, 1908?

A. My duty was to see the ship discharged and loaded properly and fitted for her voyage.

Q. Did you have any other conduct of the affairs of the ship within these limits?

A. I had a free hand.

Q. Where was the ship discharging her cargo at that time? A. At Eagle Harbor.

Q. What was the cargo?

A. Creosote in drums.



(Testimony of Capt. David Baird.)

Q. What kind of drums were these, Captain?

A. Iron drums.

Q. Can you describe them more specifically?

A. About ninety gallon each, I should judge, riveted drums with iron bands.

Q. Were they cylindrical in shape?

A. Yes, sir. [271—100]

Q. The diameter being the same throughout?

A. Yes, sir.

Q. Flat top and bottom?

A. Yes, sir, the ends were flat.

Q. You speak of bands; what were they?

A. Each side of the bunghole, I suppose about eight inches from it, two iron bands, go completely around the drum about three-quarters wide and about an inch and a half high.

Q. That is they projected beyond the surface of the drum an inch and a half or an inch and a quarter?

A. Yes, sir.

Mr. McCLANAHAN.—I would like to introduce, with your consent, Mr. Bogle, a chart showing the exact location of Eagle Harbor, a chart issued by the Coast and Geodetic survey.

Chart marked Respondent's Exhibit "3," filed and returned herewith.

Q. Captain, will you mark with a cross the approximate place where the "Sardhana" was lying in Eagle Harbor?

(Witness does so.)

Now, then, on the margin of the map will you duplicate the cross and put your initials?

(Testimony of Capt. David Baird.)

(Witness does so.)

Which way was the bow pointed?

A. The vessel was moored with her head to the westerly.

Q. Westerly magnetic?      A. Yes, sir.

Q. How were the mooring lines run?

A. She had two anchors out ahead; she had mooring lines to a dolphin over each quarter aft.

Q. How far did she lie, approximately, from the slip of [272—101] the wharf of the Pacific Creosoting Company?

A. Anything from 50 to 100 feet.

Q. In what general direction was the Pacific Creosoting Company's wharf, as it lay there?

A. On the starboard quarter.

Q. On what side of the ship was the donkey-engine used to discharge the ship?

A. Starboard side.

Q. Where were the lighters used?

A. On the port side.

Q. Were they or were they not the lighters that were used for discharging, moored to the ship?

A. Yes, they were moored to the ship.

Q. What was the size of these lighters?      A. Approximately?      A. About 60x30, no less.

Q. What freeboard would they have light, in your opinion?      A. Three feet.

Q. What would they have loaded?

A. 18 inches.

Q. Do you remember the occasion of one of these lighters capsizing?      A. Yes, sir.

(Testimony of Capt. David Baird.)

Q. Did you see the capsized lighter?     A. No.

Q. Just remember that there was a lighter capsized.

A. It was no interest to me, because the cargo had been delivered as far as the ship was concerned, we were finished.

Mr. BOGGLE.—I move to strike the answer as not responsive to the question. [273—102]

Q. How often have you had occasion in your experience, to visit Eagle Harbor?

A. I visited two ships there.

Q. Two ships?     A. Yes, sir.

Q. What can you say with reference to its situation regarding sea and weather?

A. Oh, it is a landlocked harbor, perfectly safe, I should say.

Q. On what side of the vessel, lee or weather, did the lighters lie that were being loaded with creosote?

A. That depended on the direction of the wind.

Q. Do you know the general direction of the wind there?

A. Well, of course, if the wind was from the south, in this case the starboard side would be the lee, if the wind was from the northerly quarter, the opposite side would be.

Q. Then there is no prevailing wind that you know of there?

A. Westerly winds prevail at that time of the year.

Q. Do you know the prevailing currents, if any?

A. No current there.

(Testimony of Capt. David Baird.)

Q. Did you have occasion to see how these scows were being loaded? A. Oh, yes, I saw the scows.

Q. How were they loaded?

A. They put a tier of drums on end across the ends of the scow, then the rest of the drums were stowed athwartships in tiers.

Q. By the ends of the scows you mean what would correspond [274—103] to the bow and stern of the ship? A. Yes, sir.

Q. On these ends of the scow were placed tiers of drums upright? A. Yes, sir.

Q. From that I understand the tiers are then laid on their side athwartship? A. Yes, sir.

Q. Are they built up solidly that way or pyramidal?

A. They put one complete tier down. The next tier is brought in half the width of the drum and goes into the cont-line between the two drums below it.

Q. Goes into the cont-line between the two drums?

A. Yes, sir, and the tier comes in, the third tier comes in another lot of drums.

Q. Would it have been possible, in your opinion, for a scow so loaded, to have capsized fore and aft?

A. Impossible.

Q. So that if this scow did capsize it must have capsized athwartships? A. Yes.

Q. In your opinion would it have been possible for that scow to have capsized athwartships through such stress of weather as might have been possible where it lay on the port side of the "Sardhana" in Eagle Harbor? A. No.

(Testimony of Capt. David Baird.)

Q. If the scow did capsize, what in your opinion, then, was the cause of its capsizing? A. Water.

Q. Water where? [275—104]

A. In the hold.

Q. You have stated in your opinion it would be impossible for that scow to have capsized athwartships through such weather as might be possible where she lay, through the cause of weather alone or sea, why?

A. Never any sea in there, and besides I suppose the scow could stand up in there until the bottom drops out.

Q. Well, is there any reason why it would be impossible for the scow to capsize under these circumstances? A. No, I cannot say there is.

Q. Would the rings around the drums have any effect upon the matter? A. No.

Q. Would it be easier or harder for the drums to leave the scow and slide off into the sea because of these rings?

A. The rings would obviate them sliding off until the scow went to a certain angle, and the whole would come off.

Q. How would the water inside of the scow bring about its capsizing.

A. Give her a list, which would go as the water increased.

Q. Do you remember, Captain, the fact of a fire having broken out on the "Sardhana" at that time?

A. Yes, sir.

Q. Did you at any time after the fire have occasion to see it?

(Testimony of Capt. David Baird.)

A. The captain came over here and reported to me there had been a fire on board. I went to Eagle Harbor the next day with him.

Q. What for?

A. To see if any damage had been done to the ship. [276—105]

Q. What did you find?

A. I found there was no damage that required repairing.

Q. What was it exactly that you found?

A. I found that the fire apparently had taken place at the outside of the lazaret door, and the door was scorched and the underside of the deck above it was smoke-stained.

Q. Was the ceiling above burned at all?

A. The under side of the deck?

Q. Yes. A. No.

Q. Was the floor of the upward deck burned at all? A. No.

Q. Was the bulkhead, aside from the door burned?

A. No.

Q. Did you make an examination to ascertain that fact? A. I did.

Q. Have you seen the door recently?

A. Yes, sir.

Q. State whether or not the door, as you saw it, did or did not represent the extent of the fire?

A. That represented the extent of it.

Q. Did you see on the floor of the between-decks anything?

A. I saw a piece of burned gunny-bag there and a

(Testimony of Capt. David Baird.)

lot of water slopped about.

Q. How far from the door was the stowage of the creosote drums?   A. About two feet.

Q. Was there any dunnage in that locality?

A. There was no dunnage particularly at the door, but [277—106] further in to the wing some loose wood had been thrown from the end of the drums and was lying on the between-decks.

Q. Was there any dunnage between the drums themselves?   A. Yes, sir.

Q. Was there any dunnage between the drums immediately in front of the fire?   A. Yes, sir.

Q. What business had you in connection with the investigation of this fire?

A. Well, it was my business to see that the vessel was—if she was damaged, to see that she was repaired—to report to the underwriters of the vessel and have it repaired.

Q. Did you make any such report?   A. No.

Q. Did you make a report of any kind?   A. No.

Q. Why not?

A. Nothing to report of any importance.

Q. Now, what service did that bulkhead door perform?

A. It was an entrance from the hold into the ship's storeroom.

Q. State whether it was as efficient to perform that service after the fire as before.   A. Yes, sir.

Q. Were any other parts of the ship burned?

A. No.

Q. Aside from the bulkhead door?   .

(Testimony of Capt. David Baird.)

A. No. [278—107]

Q. You have already stated that the door was the only part burned? A. Yes, sir.

Q. How often did you visit the ship while she was there?

A. I was over three or four times. I had other ships here, of course, and I was over there to see that things were going all right.

Q. Did you at any time see the crew of the "Sardhana" pumping creosote out of the hold?

A. Yes, sir.

Q. Do you know how much creosote was in the hold of the "Sardhana"?

A. The captain reported 13 inches.

Mr. BOGLE.—I object as hearsay.

Q. But you saw the crew pumping creosote?

A. Yes, sir.

Q. Where was it being pumped to?

A. It was being pumped into barrels on a scow alongside.

Q. You distinguished barrels from drums?

A. Yes, sir.

Q. Do you know what became of that creosote afterwards? A. No.

Cross-examination.

Q. (Mr. BOGLE.) Do you know of your own knowledge, Captain, how much creosote was in the hold of this vessel when she arrived at Eagle Harbor—loose creosote, of your own knowledge?

A. No. The captain officially reported to me 13 inches.



(Testimony of Capt. David Baird.)

Q. I ask you if you know of your own knowledge.  
[279—108]

A. No, I do not. I did not sound the well.

Q. Do you know how many barrels were filled with this creosote from the hold? A. No, I do not.

Q. Do you know how many gallons of creosote were in the hold? A. I do not.

Q. Do you know whether all the barrels which were filled with creosote and whether the creosote in these barrels was in fit condition for use, or whether any of it was thrown away? A. I do not.

Q. Captain, you of course did not see this fire aboard the "Sardhana"?

A. I was at home; it occurred during the night.

Q. You saw it next day, about what time?

A. I went over, I should imagine, on the 10 o'clock boat.

Q. Had the crew cleaned up the results of the fire, the water, etc.?

A. There was some water laying around the place; it was wet around there.

Q. Do you know whether they had removed any of the dunnage or stores or anything that was destroyed in the fire? A. I do not.

Q. I understood you to say, Captain, that the creosote drums were about two feet away from the fire?

A. From the bulkhead.

Q. On each side? A. On the foreside.

Q. That is the side away from the side on which the fire [280—109] occurred?

A. No, that is the side on which the fire occurred.

(Testimony of Capt. David Baird.)

Q. How far were these creosote drums away from the fire itself? A. I don't know.

Q. You do not know whether any had been removed?

A. They had not been moved; they were still in the position they were when the vessel arrived.

Q. Do you know at what temperature creosote is combustible? A. No, sir.

Q. This creosote was in drums; there was no loose creosote near the fire? A. No.

Q. Was there any dunnage near the bulkhead where the fire occurred?

A. Yes, there was some dunnage between the ends of the drums and bulkhead at the sides.

Q. Was there any creosote upon this dunnage?

A. I did not see any.

Q. Now, as I understand, you testify that this door was scorched, is that correct?

A. I said the ceiling was smoke-stained and the door was scorched.

Q. You have seen the door, have you not?

A. Yes, sir.

Q. You call that a scorched door?

A. Pretty well scorched.

Q. Pretty well scorched. You would say it was burned, would you not? A. I don't know.

Q. Is not that burned a quarter or half an inch deep? [281—110]

A. What is a burn? Is a burn a scorch or what is it?

Q. That is what we are trying to find out. You

(Testimony of Capt. David Baird.)

say none of the bulkhead was burned.     A. No.

Q. Was there any of it scorched within your meaning of that word?

A. No, it was not; the paint was not even blistered.

Q. All just as it was before?     A. Yes.

Q. Mr. Tuttle is mistaken if he says any of the bulkhead was burned?     A. If he said so he is.

Q. You heard him say so, didn't you?

A. I did not pay much attention. I was looking out of the window.

Q. He was there next day and he saw it?

A. Yes, so was I.

Q. You represented the owners of this ship, didn't you?     A. Yes, sir.

Q. Captain, you testified as to the contents of these drums, you testified there was 90 gallons, that is, Imperial gallons?     A. Yes, sir.

Q. What would they contain of United States gallons?

A. I suppose a fifth more. In American gallons it would be a little more than a hundred.

Q. Did you make any survey of the fire damage, or just a casual inspection?

A. Oh, I went and surveyed it on my own account to see if anything was required. [282—111]

Q. Did you make any written report of that survey?     A. No.

Q. No written report at all.

A. No. I wrote to the owners and told them.

Q. Was it within your duty to see that the freight

(Testimony of Capt. David Baird.)

due the ship was collected from the creosote company?

A. I suggested that it was time that they were collected, some of it.

Q. There was quite a little unpleasantness about collecting the freight, was there not, between your office and the creosote company?

A. Well, I don't know. I simply suggested that it be collected and I believe it was collected. The unpleasantness did not touch me, if there was any.

Q. You had nothing to do with that? A. No.

Q. Captain, these lighters were fastened to the ship, were they? Lashed tight to the ship with lines, were they? A. You could not lash a lighter.

Q. How fastened?

A. On the inside corner of the lighter they have a line fore and aft, and out to the two outside corners they have a line out to the lighter.

Q. Do you know how many drums of creosote would constitute a load on one of these lighters?

A. No.

Q. Do you know how many drums were on this lighter the night it capsized? A. No.

Q. Did you survey the lighter after it capsized?  
[283—112] A. Never saw it.

Q. You do not know whether there was any water in that lighter or not? A. I do not.

Q. You do not know anything about the condition of the weather that night? A. No.

Q. Don't know which direction the wind was blowing over there? A. No.

(Testimony of Capt. David Baird.)

Q. What did you mean, Captain, when you stated in answer to counsel in your direct examination, that the lighter could not have capsized under any conditions of weather over there?

A. Well, lying alongside the ship she could not.

Q. She could not?     A. No.

Q. Under any conditions of weather.     A. No.

Q. You mean any conditions of weather that you think might occur there, or any conditions of weather that might occur any place?

A. Oh, well, a typhoon might come in and blow her ashore.

Q. She would capsize with a good deal less than a typhoon, if heavily loaded?     A. I judge not.

Q. You do not know how stable she was when loaded?

A. Well, it takes a good deal to capsize them, let me tell you.

Q. She could not possibly have turned down and listed [284—113] so as to have thrown the creosote overboard without having water in her, that is your opinion?     A. That is my opinion.

Q. Do you know whether there was a westerly wind on the night of this accident?     A. No.

Q. You had only been over there twice, Captain?

A. I might have been there three times.

Q. What do you base your statement on that a westerly wind is the prevailing wind in that harbor?

A. The prevailing winds on Puget Sound are westerly winds.

Q. You say in the harbor. Does not the shore line

(Testimony of Capt. David Baird.)

affect the direction of the wind somewhat in this harbor?

A. Sure, it does, it is open to the westward and it blows either up or down.

Q. There is no condition of weather which would cause the ship to have considerable motion over sideways, is there?     A. No.

Q. Could not have any motion sideways?

A. Not with that wind.

Q. Not enough to cause this scow to capsize?

A. No.

Q. Now, if it appears from examination that this scow had no water in her, then how did she capsize?

A. I cannot tell you how she capsized.

Q. What was the proper method of loading, in your opinion, a scow with creosote drums?

A. The way she was loaded.

Q. It was properly loaded then, was it? [285—  
114]     A. Yes, sir.

Q. Do you know who furnished the scows?

A. No.

Q. Captain, do you know what the conditions of this charter were with reference to delivery of cargo?

A. Well, it is a good long time ago. I have had many things on my hands since.

Q. Do you know whether the ship was free from all liability after the cargo left her tackle?

A. Yes, sir.

Q. You know that?     A. Yes, sir.

Q. How do you know that, Captain?

A. I know that—that was in the charter-party;

(Testimony of Capt. David Baird.)

that was the usual clause in every case.

Q. That is the usual clause, but do you know that was in this charter-party?

A. I would not swear at present that it was.

Q. If it had not been in the charter-party then there would have been some responsibility on the part of the ship, might have been for the loss of this creosote?

A. Well, I don't know; I would not admit that.

(Testimony of witness closed.)

Hearing adjourned until Feb. 21, 1913, 10 A. M.  
[286—115]

Seattle, February 21, 1913.

PRESENT: Mr. BOGLE, for the Libelant.

Mr. McCLANAHAN, for the Respondent.

[**Testimony of J. J. Preece, for Respondent.**]

J. J. PREECE, a witness called on behalf of the respondent, being duly sworn, testified as follows:

Q. (Mr. McCLANAHAN.) Mr. Preece, you live in Seattle? A. Yes, sir.

Q. You lived here in November, 1908?

A. Yes, sir; I don't live in Seattle; I live in Kirkland, at present.

Q. Where were you living in November, 1908?

A. Living in Seattle.

Q. What was your business in November, 1908?

A. Stevedore foreman.

Q. How long has that been your business?

A. Been that on and off since 1886.

(Testimony of J. J. Preece.)

Q. And you are now engaged in that business?

A. Yes, sir.

Q. Do you remember stevedoring the bark "Sardhana" in November, 1908?      A. Yes, sir.

Q. Where was she then?      A. Eagle Harbor.

Q. You were foreman of the stevedores unloading her?      A. Yes, sir.

Q. What was she loaded with?

A. Creosote in drums.

Q. Do you remember, Mr. Preece, the incident of a lighter of drums being capsized on that occasion? [287—116]      A. Yes, sir.

Q. Who loaded that lighter?      A. I did.

Q. Do you remember what day of the week it was?

A. Well, if I remember rightly, and I am pretty sure I am right, it was on Saturday.

Q. Was the barge completely loaded or not?

A. Just finished.

Q. Completely loaded?      A. Yes.

Q. You refer to the barge that capsized?

A. Yes, sir.

Q. Will you tell how that barge was loaded?

A. She was loaded with drums; on the end stood up one tier, if I remember rightly, then the remainder were stowed athwartships, three tiers, one on top of the other. The first tier laid on the bottom and the next tier drawn in half a drum on each side and then the third tier was the same, to keep them from shifting.

Q. They were laid athwartships on their sides?

A. Yes, sir.



(Testimony of J. J. Preece.)

Q. How far from the side of the barge did the athwartship tier of drums commence, that is, how much margin was there of the barge?

A. About 18 inches on the lower tier.

Q. That is, there was a free deck space of 18 inches before you commenced to lay?

A. Yes, on both sides.

Q. What was the character of the flooring of the barge—smooth or rough? [288—117]

A. Well, it would not be very smooth. I could not tell you exactly whether they had a good deck on it or not.

Q. You don't remember that?

A. It would not be very smooth, anyway. As a rule, these scow decks are pretty rough.

Q. At what time in the afternoon did you finish the loading of the barge?

A. If I remember rightly, it was between four and five o'clock in the afternoon; somewhere around there.

Q. What was the custom of the creosote people with reference to the treatment of loaded barges, what did they do with them?

A. Took a tug and towed them away.

Q. Did they tow this barge away? A. No.

Q. How was this barge attached to the ship?

A. With lines.

Q. How were these lines fastened and where were they fastened to?

A. Two lines, breast lines to hold it into the ship and a head line and a stern line to keep her from

(Testimony of J. J. Preece.)

going fore and aft, attached to the ship.

Q. How long was that barge?

A. The barge would be 75 or 80 feet, I should judge.

Q. What was the beam?

A. I could not tell you exactly how long but somewhere about that. The beam would be about thirty feet.

Q. What part of the bark was she attached to?

A. Right at her main hatch, about amidships.

Q. How high would the deck of the bark be above the deck of [289—118] the lighter?

A. Well, I do not remember at what stage of the discharging we were on when that barge capsized.

Q. I do not care to have you give it exact, but just approximately.

A. You mean the deck of the bark under the rail?

Q. How high was the deck above the deck of the lighter, approximately? A. At that time?

Q. Yes.

A. Seven or eight or nine or ten feet.

Q. How high would the three tiers of loaded drums on the lighter bring that?

A. Fetch it pretty well up—pretty well up to the rail.

Q. Pretty well up to the rail of the bark?

A. If I remember rightly, that particular scow itself was pretty well up. I think we could step right from the rail and jump on the loaded barge, but I will not swear to that.

Q. You did not see this lighter capsize, did you?

(Testimony of J. J. Preece.)

A. No, sir.

Q. When did you first learn of it?

A. I learned of it Monday morning when I went back to Eagle Harbor.

Q. At which side of the bark was she moored when you left Saturday night?

A. She was moored on the port side.

Q. Where did you have your donkey-engine?

A. On the starboard side.

Q. Did you see the capsized lighter the next morning, [290—119] Monday morning, and were the lines still attached to her?

A. I have been thinking this thing over about that capsizing of the barge, and it seems to me, as I see it now, that the barge had been towed away from the ship and tied up to the end of the dock.

Q. When you saw it.

Q. I am pretty sure that is where I saw it. I have been trying to think where that barge was, and I am pretty certain she was tied at the end of the dock, towed out of the way, so that we could go to work Monday morning. I am pretty certain she was tied up to the end of the dock.

Q. You have had considerable experience loading barges? A. I have loaded quite a few of them.

Q. How great has been your experience?

A. I discharged four cargoes of creosote right in Eagle Harbor, one after the other, and I have loaded barges alongside vessels here for years.

Q. In your opinion, would it be possible for that barge to capsize fore and aft? A. No.

(Testimony of J. J. Preece.)

Q. In your opinion, considering the situation of the bark and the lighter in Eagle Harbor at the time, would it have been possible for that lighter to have capsized through any stress of wind or sea?

Mr. BOGLE.—I object as calling for an opinion of the witness, and the witness is not qualified.

A. If there was sea enough came in there, she might capsize, but the way the vessel was lying and the way the barge was alongside, I don't believe any sea ever came [291—120] in there that would capsize that barge, provided that there was no water in her, she was not leaking.

Q. Did you, Mr. Preece, know of a fire that took place on board of the bark while you were there discharging her?     A. I knew of it, yes, sir.

Q. You were not present at the time of the fire, were you?     A. No.

Q. Where were you—on shore?

A. I was ashore in my room; gone to bed.

Q. Did you subsequently see the extent of the fire?

A. Yes, I saw where the fire had burned.

Q. Where was it?

A. Right aft, forward of the lazarette, between the creosote tanks and the bulkhead of the lazarette, in the between-decks.

Q. At the time of the fire had any of the creosote drums adjacent to the bulkhead been discharged?

A. No, sir.

Q. What was the distance from the ends or sides of the drums to the bulkhead?

A. I should judge about two feet.

(Testimony of J. J. Preece.)

Q. Not more than that?

A. I hardly think it would be more.

Q. And you discharged these drums eventually, did you?     A. I discharged them.

Q. When you saw the effects of the fire, what was it?

A. Well, the door was burned, charred about that width. (Showing.)

Q. You are stretching your hands now.

A. About three feet, three feet six or four feet at [292—121] the most. That was charred pretty heavy at the bottom, and as it went up higher it was little; it went up about five feet. Then the deck above was all blackened with smoke, and the paint work was blistered, but there was nothing there.

Q. Was the floor burned?     A. No.

Q. Have you seen the door of the "Sardhana" in the courthouse in this city?

A. I have seen a door they say is the door of the "Sardhana." It looks like the one burned. I could not swear to it, because I do not know that it is. It is identical with it, if it is not. It looks like it to me.

Q. When you inspected that door, did you recognize the extent of the fire that you had seen on the "Sardhana"?

A. Just the same. I am satisfied in my mind that is the door of the "Sardhana."

Q. Are you satisfied in your own mind that represents the extent of the fire?

A. Yes. That represents the extent of the fire. But the bulkhead, there is more smoke and blisters

(Testimony of J. J. Preece.)

around on the deck above, that was blistered, the paint work was blistered.

Q. But the fire is represented by that door?

A. Yes, sir. That is all that was burned.

Q. Who are you employed by now?

A. The Washington Stevedoring Company, Captain Gibson.

Q. You have no interest in this litigation?

A. No. [293—122]

Cross-examination.

Q. (Mr. BOGLE.) When did you inspect this door? A. I have seen it this morning.

Q. When did this fire occur on board the "Sardhana"? A. The date of it?

Q. The date of it. A. I cannot give the date.

Q. Can you give the month and year?

A. They have the records when that happened. I haven't got the dates.

Q. Do you remember the year?

A. About four years ago, as near as I can remember. I do not keep dates in my head.

Q. Mr. Preece, have you a very clear recollection at this time as to the extent of the damage done aboard the "Sardhana" by this fire? A. Yes, sir.

Q. Very clear? A. Very clear, yes, sir.

Q. Still, you do not remember the month or the year in which the fire occurred?

A. No, I cannot say that I remember the year or the month. I am going around the Sound here from one place to another discharging ships, and I do not keep it in my memory.

(Testimony of J. J. Preece.)

Q. Been pretty busy in the last four or five years?

A. Yes, pretty busy.

Q. How does it happen that your recollection of this fire and the damage it done is so clear?

A. Well, I happened to know that I discharged the "Sardhana" [294—123] there, and I know that the fire was there, because I saw it, and I heard the alarm given in the first place from my room. And when I got aboard the ship the next morning they told me the fire had been there, and I looked at the bulkhead, and when the cargo was discharged from the between-decks I had as good opportunity as anybody to examine that bulkhead, because it was all open to me then. Before that a man had to crawl in there for practically 25 or 30 feet on his belly on top of the dirty creosote drums, and a man is not apt to do that. I saw it after it was discharged.

Q. What was the extent of the damage to the bulkhead? A. To the bulkhead?

Q. Yes. The bulkhead itself.

A. No damage at all.

Q. No damage whatever to the bulkhead?

A. No, none at all.

Q. You will swear to that, will you?

A. Yes, sir.

Q. But the door you will admit was burned, having seen it this morning?

A. I knew that the door was burned then.

Q. Don't you testify now largely from the inspection of the door this morning and not from your recollection of the fire?

(Testimony of J. J. Preece.)

A. No, I testify from my recollection of the fire.

Q. Do you know that this fire occurred in November, 1908?

A. I know that I have not got the dates, as I tell you, but I know that the fire occurred aboard the "Sardhana" when she was lying in Eagle Harbor discharging. [295—124]

Q. And that the bulkhead was not burned?

A. Not at all.

Q. Was it charred?

A. Well, blackened around there, that is all. Probably smoked. You must understand creosote will cause quite a lot of smoke, and black smoke at that, and the deck and the paint work around there was blistered. There was only that much space between the drums and the bulkhead where the fire was, about 2 feet. There was room enough for a man to go down in there.

Q. You say the distance you are measuring off there?

A. As near as I can remember it was very little over two feet. That is as near as I remember, and I discharged the ship.

Q. Mr. Preece, is it not possible to have gotten from the lazarette door, in forward from the lazarette door to this fire? A. Yes, sir.

Q. You would not have to do any crawling on your belly to do that?

A. Not if you went through the lazarette. I did not have a key to the captain's cabin. I did not



(Testimony of J. J. Preece.)

go through that way. It was pretty dark in there then.

Q. You did not go aboard when you heard the alarm that night? A. No.

Q. Did not get up at all?

A. I got up; in fact, I had not gone to bed, but I was just going to bed when I heard the bells ringing and heard them singing out. [296—125]

Q. Quite a little commotion around there.

A. There was for a few minutes; yes.

Q. You mean a few minutes?

A. The noise, as far as I could hear it, was over in a few minutes.

Q. What do you mean by a few minutes?

A. The first thing I heard was bells, fire-bells, ringing, and then I heard some people calling out, and I was under the impression that the steamship "Cornelian," which was lying off the shore, I seem to remember that I could hear the rattling of the windlass, and I was under the impression that the longshoremen or someone went from the "Cornelian" to the "Sardhana."

Q. For what purpose?

A. I supposed to put out the fire, whatever the trouble was. I did not know what the trouble was.

Q. How far was the "Cornelian" lying from the "Sardhana"?

A. Oh, she might be a couple of hundred yards. I do not think it would be any more.

Q. In order to get from one ship to the other they would have to lower the boats and row over?

(Testimony of J. J. Preece.)

A. They might have had a boat overboard for all I know.

Q. There was no way of getting along the dock; neither vessel was at the dock?

A. There was no way of getting from the "Cornelian" to the "Sardhana" without a boat or some raft or something. They always had a boat lowered.

Q. Did you personally inspect the loading of this barge on Saturday? A. I loaded her. [297—126]

Q. How many drums of creosote did she have fully loaded?

A. Well, I could not tell you to the drum; we loaded them to orders from the creosote company. They told me to put on so many drums. To *them* the drums three tiers high. Put them on providing she was not getting too deep. Mr. Beale was the superintendent, and when they brought it out they would tell so many tiers, and I would put them on.

Q. When this scow was completely loaded on this night, when you had finished, did you know how much water she was drawing? Did you know how far her deck was above the water?

A. I know she had all the way from a foot to 18 inches of freeboard, when I left her.

Q. Was she moored alongside, close to the "Sardhana"? A. Right close up; yes.

Q. So that she was touching the hull of the vessel?

A. She was alongside the yard-arm here; this swung out right over the scow.

Q. Would the edge of the barge be under the curve of the vessel's hull? A. The deck of the barge?

(Testimony of J. J. Preece.)

Q. Yes, sir.

A. Some of that might be and some might not.

Q. Was this one?

A. I could not say that it was. I could not say that it was not, but I don't think it was.

Q. You do not know, then?

A. I know that they build barges that way. I cannot swear whether that barge was curved or not or straight. [298—127]

Q. I say, was the deck of the barge under the curve of the counter of the vessel?

A. No, she was not under the counter at all.

Q. You are sure of that, are you?

A. I am sure of that, yes.

Q. Mr. Preece, in unloading these numerous other vessels at Eagle Harbor that you have spoken of, did you use these same barges in unloading these vessels?

A. Yes; I guess they might have been the same barges. They were hired barges. I did not have to keep track of the barges. All I done was to load them. Probably the same barges.

Q. When you knocked off work that Saturday night, did you notice whether that barge was leaking?

A. No, I left the barge; she was right up—upright on an even keel.

Q. Was she deeper in the water than barges usually are when loaded to that extent?

A. Not necessarily so.

Q. So if leaking was the cause of the barge sink-

(Testimony of J. J. Preece.)

ing she must have sprung a leak during the night?

A. Not necessarily. She might have been taking water when we got her down so far. It might have been up pretty well and when we got her loaded down to the mark she would begin to leak and the water run in.

Q. You are not testifying that she was leaking, are you?

A. I am not testifying that she was leaking; no.

Q. When you saw her the next morning—or Monday morning? A. It was Monday morning.

Q. You think she was moored, then, to the dock?  
[299—128]

A. I think she was moored to the dock. I will not swear to it.

Q. Was she upright?

A. No, she was bottom up.

Q. Was she standing high out of the water?

A. No, she was low in the water.

Q. Very low in the water?

A. Very low in the water.

Q. Any indications of any water being in her?

A. To me she looked full.

Q. She would be very low in the water if she was full? A. She was low in the water.

Q. What do you mean by low in the water? How high was she out of the water?

A. The bottom of her might have been a little more than flush with the water, very little more.

Q. You are sure of that, are you?

A. I am sure of that; yes.

(Testimony of J. J. Preece.)

Q. Of course, Mr. Preece, you do not know about the sinking of this barge?

A. I don't know anything about it. Only I left on Saturday night and the barge was all right, and when I came back Monday morning the creosote was in the bottom of the bay. That is all I know about it.

Q. You are familiar with the construction of these barges, are you?     A. Some, yes.

Q. Were there any holes on the barges that would let water in if she was upside down?     A. Yes, sir.

[300—129]

Q. If she was capsized she would take water then?

A. I don't say she would not. I said she was full of water.

Q. That is really all that you know about it, as she was moored to the dock on Monday morning.

A. Yes, sir.

Q. And your other testimony here is mere speculation. You do not know anything about what caused her to capsize, do you?

A. I do not know what caused her to capsize.

Q. Do you know what the weather was on the night she capsized?

A. I know how the weather was in Seattle; yes.

Q. You were in Seattle that night, were you?

A. Yes, sir.

Q. Do you know how the weather was in Eagle Harbor?

A. I do not know how the weather was in Eagle Harbor.

Q. Where were you in Seattle that night?

(Testimony of J. J. Preece.)

A. Home.

Q. Where is that?     A. On Queen Anne Hill.

Q. You do not know how the weather was on the bay that night, do you?

A. No, but I know it was rough that night here in Seattle on this waterfront here.

Q. Do you know from which direction the wind was coming?

A. No. I know that it damaged vessels and scows lying alongside the docks in Seattle on the waterfront.

Q. Some extremely heavy weather, was there not?

A. Quite a little blow on that night.

(Testimony of witness closed.) [301—130]

**[Testimony of C. R. Yeaton, for Respondent.]**

C. R. YEATON, a witness called on behalf of the respondent, being duly sworn, testified as follows:

Q. (Mr. McCLANAHAN.) Mr. Yeaton, you are an Englishman, are you?     A. Scotch.

Q. What is your business or occupation?

A. Second mate.

Q. Of what?

A. Of the British steamer "Oteric."

Q. Where is the steamer now?     A. Pier 5.

Q. In this city?     A. Yes.

Q. When did you arrive here?

A. I have forgotten that—Tuesday.

Q. Of this week?     A. Yes.

Q. Were you ever connected with the bark "Sardhana"?     A. Yes, sir.

Q. What was your position on the bark "Sard-

(Testimony of C. R. Yeaton.)

hana"? A. Apprentice.

Q. Were you an apprentice on the "Sardhana" at the time she was at this port, in November, 1908?

A. In Eagle Harbor, yes.

Q. At Eagle Harbor? A. Yes.

Q. Did you make the voyage from London on her?

A. I did.

Q. What was her cargo at that time?

A. Creosote, in drums. [302—131]

Q. During the voyage from London to Eagle Harbor, was there any creosote pumped out of the hold or limbers of the ship, into the sea? A. None.

Q. After arrival at Eagle Harbor, was there any creosote in the hold of the vessel? A. Yes, sir.

Q. How much?

A. I could not tell you for certain, but I believe about a foot.

Q. Did you have anything to do with pumping that creosote out? A. Yes, sir.

Q. What did you have to do?

A. Pumped it.

Q. You, yourself? A. Personally.

Q. State how much of that creosote was pumped out.

A. The only way I could state was giving you the approximate number of days we pumped.

Q. I don't mean that. Was it all or less than all pumped out?

A. Until the pumps sucked; they would not draw any more.

Q. Was there anything done after that to what re-

(Testimony of C. R. Yeaton.)

mained? A. I could not say for certain.

Q. How many days, do you recollect pumping creosote out of the hold? A. At least four.

Q. Was this pumping done after the discharge of the drums, or during the discharge of the drums?

[303—132]

A. Towards the latter part of the discharging.

Q. Where was that pumped to?

A. Into empty barrels on the scow.

Q. Where did these barrels come from?

A. From the creosote company, to the best of my knowledge.

Q. Where was the scow taken after that, after the barrels were filled?

A. To the customary place of discharge, as far as I know.

Q. Have you any idea of the number of barrels that were pumped out?

A. No, I haven't—I know from seeing, but I did not count them.

Q. Were there many or few? A. Many.

Q. Mr. Yeaton, do you remember the occasion of a lighter on which were creosote drums, capsizing?

A. Yes, sir.

Q. Where were you on the night that the lighter capsized? A. On board.

Q. Do you know when she capsized?

A. Early in the morning; that is all I know.

Q. How did you have knowledge of her capsizing?

A. I heard it go.

Q. You heard what?



(Testimony of C. R. Yeaton.)

A. I heard her turn, what I supposed to be her turn.

Q. What was the noise like?

A. It sounded to me like drums hitting the ship.

Q. How long did the noise last?

A. A few seconds.

Q. Was the ship in any stress of weather at the time? [304—133]

A. Not that I could see; not that I remember.

Q. What kind of a harbor was this where the "Sardhana" lay, exposed or protected?

A. There is quite a little bay, but it is quite sheltered from the Sound itself, only a narrow entrance.

Q. Was this lighter which was capsized in an exposed or a protected position?

A. Well, from anything coming in from the Sound she was sheltered.

Q. Was it exposed to anything else, was it exposed to any sea or wind?

A. Just the amount of sea that could get up in the bay, that is in Eagle Harbor.

Q. Was the lighter lying close to the "Sardhana"?

A. Yes, sir.

Q. Do you know how she was fastened to the ship?

A. I could not give you the exact—

Q. Was the barge fastened to the ship?

A. She was fastened.

Q. With what? A. Ropes.

Q. Lines run out? A. Yes, sir.

Q. Did you see the capsized lighter the next morn-

(Testimony of C. R. Yeaton.)

ing? A. I did.

Q. Were these lines still to her? A. Still to her.

Q. Can you tell from the fact which you have just stated which way the lighter capsized?

A. Well, I should imagine towards the ship.  
[305—134]

Q. Were the lines intact when you saw them?

A. When I got out in the morning they were still intact.

Q. If she had capsized over from the ship, how would the lines have been? A. Probably broken.

Q. Do you remember the incident of the fire on board the "Sardhana"? A. Well.

Q. Did you have anything to do with the fire?

A. Yes, I did some work about it.

Q. What was the work?

A. Passing water to put it out.

Q. Where was this water passed from?

A. Ship pump.

Q. Where was the ship's pump located?

A. On the forward end of the ship.

Q. Where was the water passed to?

A. Through the saloon down into the lazarette.

Q. Through the saloon down into the lazarette?

A. Yes.

Q. Did you subsequently find out where the fire was? A. Yes, sir.

Q. And you saw it, did you? A. And saw it.

Q. During the progress of the fire, did you see the fire? A. No.

Q. What was it that you did see?

(Testimony of C. R. Yeaton.)

A. Smoke coming out from the saloon.

Q. Do you remember the occasion of fire-extinguishers being brought aboard the ship? [306—135]

A. I do.

Q. Did you have anything to do with them?

A. I helped a man to get them over the rail.

Q. Did you do any work with your water buckets after that?

A. I could not say.

Q. From the time of the alarm to the time when you ceased work on the fire, how long was it?

A. I could not exactly say.

Q. Do you know whether these extinguishers were used on the fire itself?

A. I did not see them after coming over the rail.

Q. You did not see them after they came over the rail. Was it a dark night?

A. Yes, fairly dark.

Q. When did you see the fire itself?

A. Well, I could not say that I saw the fire myself.

Q. When did you see the result of the fire?

A. That night I went down in the lazarette, but I did not see much of it then, it was too dark.

Q. When did you actually see the result?

A. Oh, frequently afterwards.

Q. Frequently after that?

A. Yes, sir.

Q. Did you see it after that when the cargo was out?

A. Yes, sir.

Q. What was the extent of the fire as you saw it?

A. Merely the door charred.

Q. You have seen the door, have you, Mr. Yeaton?

A. I have.

Q. In the courthouse in this city? [307—136]

(Testimony of C. R. Yeaton.)

A. Yes, sir.

Q. Is that the "Sardhana's" door?

A. To the best of my knowledge, yes.

Q. Does or does that not represent the extent of the fire?     A. As far as I ever saw it, yes.

Q. Was the ceiling or the under part of the deck burned at all?     A. No.

Q. Was the floor of the between-decks burned at all?     A. No.

Q. Was the bulwark burned at all other than the door?     A. The bulkhead?

Q. The bulkhead, I mean.

A. No, not that I saw.

Q. How many times did you see that after the fire itself?

A. I should say daily for quite a long time. My work took me down there practically every day.

Q. Were there any repairs ever made to the fire damage?     A. None.

Q. Were any repairs ever needed?

A. Well, I should say no, because if there had been any they would have had them done to save the ship's stores.

Q. This door protected the stores from pilferage?

A. Yes, sir.

Q. When do you sail from here, Mr. Yeaton?

A. To-night.

Q. Until you arrived here, you had not heard of this litigation, had you?     A. No, not at all.

Q. How long were you on the "Sardhana" after she left Eagle [308—137] Harbor?

(Testimony of C. R. Yeaton.)

A. About two years, I should think.

Q. When you left her, there had been no repairs made of the fire damage? A. None.

Cross-examination.

Q. (Mr. BOGLE.) Mr. Yeaton, state if you know when this door was removed from the "Sardhana."

A. I beg your pardon?

Q. When was this door which was at the Federal building removed from the "Sardhana"?

A. I do not know; I did not know it was removed until I saw it here.

Q. It was still on the "Sardhana" when you left?

A. Yes, sir.

Q. In the same condition as it was after the fire?

A. Exactly.

Q. Is it not a fact that a good portion of the charred portion of that door had been scraped off? Cannot you tell that from an inspection of the door itself? A. I did not notice that.

Q. You did not notice that any charred portion had been scraped off? A. I did not notice it.

Q. Did you make a careful examination of that door this morning?

A. I went to look at it, and I chiefly looked at it to see if it was the door.

Q. Where did these fire-extinguishers come from, where were [309—138] they obtained?

A. They were brought by the creosote people.

Q. From the creosote company's plant?

A. Yes, sir.

Q. At the time these fire-extinguishers were

(Testimony of C. R. Yeaton.)

brought aboard, was the smoke still coming out of the ship? A. Probably, I think.

Q. How long after the fire-alarm was sounded was it before you went below to see the fire?

A. I did not go below until it had been extinguished.

Q. How long was that after the fire began?

A. That would be some time.

Q. Do you know who discovered the fire?

A. I believe the watchman of the ship.

Q. This fire was below-decks, was it not?

A. Between-decks.

Q. The watchman's duty is principally on the main-deck, is it not? A. Yes, sir.

Q. Do you know how he discovered this fire?

A. Probably saw smoke come floating up the ventilators.

Q. You do not know how long this fire had been burning when it was discovered by the watchman, do you? A. No.

Q. The watchman discovered the fire and immediately gave the alarm, did he? A. Yes, sir.

Q. Was that alarm responded to by any outside persons? A. Yes, subsequently.

Q. Well, naturally, it would be subsequently. [310—139] Who responded, what persons responded to this fire-alarm, if you know? I do not want you to give the names of the persons, but where did they come from, if you know?

A. There were several ships lying in the bay, laid up for the winter.

(Testimony of C. R. Yeaton.)

Q. Do you remember how the ships laid?

A. I know one that was there loading. That was the "Cornelian."

Q. Was the "Jupiter" lying in the harbor at that time?

A. The "Jupiter" was there. I know there were some of the "Jupiter's" men aboard.

Q. They came aboard and assisted in putting out the fire?

A. Yes. I think their work consisted mainly in passing water. I do not know whether they were down below or not.

Q. Did any of the crew of the "Hornelia" come aboard to assist?     A. Yes, sir.

Q. And they assisted in some manner, did they?

A. Yes, sir.

Q. I understood you to say some of the employees of the creosoting company came aboard with the fire-extinguishers.     A. Yes, sir.

Q. Could you tell me approximately the number of men who were engaged in extinguishing this fire?

A. Well, probably around about a dozen, possibly more.

Q. How many were below, do you know?

A. I could not say. I was not below myself. Probably four or five.

Q. Do you know how long they were engaged in passing water down to put out this fire, before the extinguishers arrived? [311—140]

A. No, I could not say any nearer than probably the time it would take for to go to the plant and get

(Testimony of C. R. Yeaton.)

the extinguishers and take them down the wharf and get a boat and fetch them out.

Q. Cannot you give us an approximate amount of time it would take? You say there were 12 men engaged in passing this water? A. Not all the time.

Q. Did the crew of the "Jupiter" get aboard before the fire-extinguishers arrived?

A. I could not say as to that.

Q. Where was the "Jupiter" lying with reference to the place that the "Sardhana" was lying?

A. Astern of us.

Q. Approximately how far distant?

A. Three hundred feet, perhaps.

Q. Do you know how they reached the "Sardhana"? Was it necessary for them to lower a boat and row over? A. They always had a boat down.

Q. It was necessary for them to come over by boat?

A. You could probably come by logs, if you were good at it.

Q. Have to be pretty good at it, at night, would you not? Do you know how they did come?

A. I should say by boat.

Q. Where was this other ship, the "Hornelian," lying in the harbor with respect to the place the "Sardhana" was anchored?

A. Nearer the entrance to the harbor.

Q. I mean about how far distant?

A. Probably about as far as the "Jupiter."

Q. The crew from that vessel would also have to take a boat [312—141] to get to the "Sardhana,"



(Testimony of C. R. Yeaton.)

would they not?     A. Yes.

Q. Have you any idea how long it took the crews of these two vessels to get the boats and row over to the "Sardhana" and get aboard?

A. No, I could not say.

Q. How many men were engaged passing water, prior to the time that the crews of these other vessels arrived to assist?

A. Well, all our crew was on board; probably would be a dozen.

Q. In passing water?     A. Yes, sir.

Q. And I understood you to say these other crews assisted you in passing water when they came aboard?     A. Yes.

Q. How many were there from these other two vessels?     A. About a dozen.

Q. So that there would be about 24 men passing water after the crews arrived?

A. There would be 24 on board. I do not know whether they were all doing what they came to do.

Q. They were all assisting in the general work trying to extinguish the fire?

A. They were aboard with that intention.

Q. Have you any idea how many buckets of water were passed down into the "Sardhana" for the purpose of extinguishing this fire?

A. No, I could not say. It is quite a slow process passing it along the deck and down. [313—142]

Q. Would you say forty or fifty buckets?

A. I would not like to say. It would take a long time to pass fifty buckets along and pump it.

(Testimony of C. R. Yeaton.)

Q. I just want to get at it approximately, say forty buckets.

A. Probably forty. I would not say. That is, passed down. I don't know what they did with it when they got it below.

Q. Was the smoke still coming out of this vessel when the fire-extinguishers arrived?

A. Probably, I should think; but I could not say.

Q. These fire-extinguishers were immediately sent down below, were they?

A. I presume so, although I did not see them go.

Q. Mr. Yeaton, was there not a considerable amount of dunnage from the "Sardhana" along the bulkhead door, in the immediate vicinity of this fire?

A. I cannot say that I know. There might have been some, but that door was a solid door, and had there been much dunnage there, it would have got jammed and would not slide.

Q. I do not quite follow that.

A. The door slides.

Q. But the burned side of the door would not prevent it sliding?

A. The dunnage would have prevented that.

Q. Mr. Yeaton, did you mean to testify that there was no damage whatever to the bulkhead?

A. I never saw it.

Q. I say, do you swear that there was no damage to the bulkhead?

A. It might have been smoked, but I never saw any trace of [314—143] burning on the bulkhead.

Q. Was it smoked?

(Testimony of C. R. Yeaton.)

A. It might have been. I could not swear that it was or that it was not.

Q. Is it not a fact, Mr. Yeaton, that that fire was approximately four years ago? Now, have you a clear recollection of the damage that was done?

A. Oh, I think so.

Q. Of course, your recollection is very clear because you inspected the door this morning?

A. No, but the fire *in* down there was very clear. It was the only fire that I had ever come in contact with at sea, so I remembered it.

Q. It is very vivid in your recollection, is it?

A. Yes, it is vivid.

Q. Considerable danger to the ship at the time, was there?

A. Well, anything like that aboard ship, getting along without much ado, generally causes excitement, of course.

Q. Your recollection is not clear enough to state whether the bulkhead was even smoked or not?

A. No. It might have been smoked more or less; but probably I would not take any notice of it there.

Q. But you think it was not burned?

A. I certainly remember clearly that the door was burned.

Q. There is no dispute about that.

A. But I mean to say I have been so all along; had the bulkhead been burned I would have remembered that too.

Q. That is what you are basing your testimony on at this time, is it? A. On what? [315—144]

(Testimony of C. R. Yeaton.)

Q. The fact that you remembered that the door was burned, you think that you would have remembered that the other was burned if it had been?

A. Well, we were down there. Of course, we could get in there any time and ascertain what the damage was out of curiosity.

Q. Can you swear at this time that the bulkhead was not burned to any extent? Can you swear that at this time?

A. Well, I would not like to swear that there was no damage done to the bulkhead.

Q. Would you swear that the ceiling was not smoked and blistered?

A. No, I would not swear that the ceiling was not smoked.

Q. Would you swear it was not blistered from the flames and the heat of the fire?

A. No, I would not swear to that.

Q. Do you know what was done with this creosote when it was pumped out of the ship into barrels?

A. No. I presume they took it to the customary place where they took all the scows and discharged it there.

Q. You do not know what was done with it?

A. Oh, no.

Q. Approximately how many barrels were filled with this creosote from the hold of the ship?

A. I don't know.

Q. Haven't you any idea at all?

A. No. I just used to look over the side and see how they were getting along with our pumping, etc.

(Testimony of C. R. Yeaton.)

My position then entailed no responsibility as to price or quantities. [316—145] All we had to do was to pump. When I was told to stop I stopped.

Q. Have you any idea how many gallons you pumped out of the hold? A. No.

Q. Did you state that there were more or less than four thousand gallons pumped out of the hold of that ship? A. No. I could not say.

Q. Did you have charge of the pumps on the entire voyage across? A. No.

Q. Was the pump used at all on the voyage across?  
A. Not at all.

Q. You are positive of that, are you?

A. Except that probably the carpenter turned it over to oil it.

Q. But you are sure that no water or creosote was pumped out of it during the voyage across?

A. Yes.

Q. You had pretty rough weather on that voyage?

A. We generally do on a voyage of that length.

Q. Shipped considerable water aboard, didn't you?

A. You cannot very well go to sea without getting it. I would not say there was any especially heavy weather that I remember of. Not any worse than any other voyage.

Q. There was enough rough weather to break the cargo loose in the hold? A. Yes, certainly.

Q. So that it worked pretty heavily?

A. All I could say about it was that it is the ordi-

(Testimony of C. R. Yeaton.)

nary [317—146] Cape Horn voyage.

Q. Would the fact that the cargo was broken loose in the hold of the vessel—

A. It certainly worked a little.

Q. Did it break loose and work so that it had to be restowed and dunnaged?

A. We certainly dropped dunnage down; we did not do any restowing, we could not restow.

Q. Mr. Yeaton, how was this scow fastened alongside? Was the side of the scow up against the hull of the vessel?

A. Just what you would call alongside.

Q. Was it touching the vessel?

A. Not all the time, I should imagine. Just the way a scow lies to a ship—sometimes alongside and sometimes a little bit off.

Q. What was the condition of the weather on the night this scow capsized?

A. I have no particular recollection of it being either very bad or very fine.

Q. Have you any particular recollection at all what the weather was? A. No.

Q. You do not remember?

A. No. Had it been bad I should think I would remember it, because we probably would have had trouble with our own mooring.

Q. Do you know which way this scow capsized, beyond the fact that you heard something hitting the side of the vessel? A. No.

Q. Do you know whether or not this scow itself was bumping [318—147] into the vessel on that

(Testimony of C. R. Yeaton.)

night? A. No, I could not say.

Q. If the scow was moored alongside the vessel and there had been any considerable swell, she would naturally bump the vessel, would she not?

A. Quite probably.

Q. Do you know whether this scow took any water before she capsized? A. I could not say.

Q. Did you make any examination of the scow afterwards? A. No, merely looked at it.

Q. Do you know whether any repairs were made to this scow to her bottom? A. No.

Redirect Examination.

Q. (Mr. McCLANAHAN.) What would have been your duty that night of the capsizing of the scow had the weather been bad?

A. In regard to the ship or scow?

Q. In regard to the ship.

A. Well, had the ship been ranging at all, we might have had to tighten up some of our moorings.

Q. You would not have been in your berth, would you?

A. Oh, well, of course it all depends on how the ship behaved. If she showed any signs of ranging—

Q. Suppose there had been a heavy gale and a heavy sea, what would have been the situation on board the "Sardhana" that night?

A. It would have been just the same unless she started to [319—148] range.

Q. In your judgment, was it possible to have a heavy sea such as would affect that lighter as she lay there that night?

(Testimony of C. R. Yeaton.)

A. Personally, I did not see any heavy sea anywhere around.

Q. That is all you can say? A. That is all.

Q. (Mr. BOGLE.) Mr. Yeaton, the extended protest, Libellant's Exhibit "L," which is signed by the master and first mate, under oath, appears this entry: "June 6th. Nothing to be noted here occurred until when it was discovered that the carpenter's sounding rod was very slightly colored with creosote." Do you remember that incident?

A. No.

Q. Have no knowledge of it?

A. No. That would not come under my notice at all.

Q. Do you know whether or not there was any creosote in the hold of the ship at that time, June 6th, 1908?

A. I probably heard it around the ship; that would be all.

Q. That creosote was allowed to remain in the hold of the ship for the entire voyage, was it?

A. It must have been. It certainly did not come from the pumps.

Q. What does the entry mean "that she had pumps, lights and lookout carefully attended to"?

A. The carpenter would attend to the pumps, turn them over and oil them.

Q. That is what the entry means, that he turns the pumps over every day to oil them? [320—149]

A. Not every day.

Q. Every time?



(Testimony of C. R. Yeaton.)

A. Once a week, and attend to the necessary parts of it.

Q. Was it your custom to turn them over more than once a week? A. I don't think so.

Q. If that entry appears in the log from day to day, would you say it had the same meaning?

A. I should say so, yes.

Q. And if that entry appears from day to day it means that he turned the pump over and oiled it on each one of these days? A. I suppose so.

Q. Is it not customary to pump a vessel on a long voyage, the length of the voyage taken by the "Sardhana" on this occasion?

A. If it is necessary.

Q. According to your testimony, it was not on this occasion, is that it?

A. Well, it was never my position to decide when it was necessary or when it was not.

Q. Do you think you are in a position to testify that it was not done?

A. Well, I know it was not done.

Q. You know that no pumps were used on this voyage? A. I know that.

Q. If the mate stated differently he is wrong?

A. I should say so, yes, sir.

(Testimony of witness closed.) [321—150]

**[Testimony of S. B. Gibbs, for Respondent.]**

S. B. GIBBS, a witness called on behalf of the respondent, being duly sworn, testified as follows:

Q. (Mr. McCLANAHAN.) Captain, what is your profession?

(Testimony of S. B. Gibbs.)

A. Agent and surveyor for the San Francisco Board of Marine Underwriters.

Q. What is your profession?

A. Shipmaster.

Q. Have you seen sea service?      A. I have.

Q. How much?      A. About 26 years.

Q. The respondent in this case is a member of this Marine Underwriters of San Francisco?

A. Yes, sir.

Q. Do you remember the fire in question in this case?      A. I do.

Q. Did you ever have occasion, after the fire, to investigate it?

A. I went aboard several days after the fire out of curiosity not *know* at the time that our underwriters were interested. I went aboard out of curiosity to see what the fire was.

Q. Who was with you?      A. Mr. Walker.

Q. Frank Walker?      A. Frank Walker.

Q. Have you seen the door that purports to be the door of the "Sardhana" in the courthouse in this city?      A. I have.

Q. Does it assist any, seeing the door, does that assist [322—151] your recollection in regard to the fire, or have you an independent recollection?

A. Well, I think I have an independent recollection as regards the fire.

Q. What did you find to have been the damage caused by the fire, the extent of the fire damage?

A. When I looked at it, the bulkhead appeared to be scorched or charred for a distance of about—that

(Testimony of S. B. Gibbs.)

is, the door. The upper portion of the bulkhead was smoked to the deck and the iron beam overhead was smoked, that is all the damage that I saw.

Q. How often have you been to Eagle Harbor?

A. I go there on an average of about twice a month.

Q. How long have you been going there on an average of twice a month? A. Eleven years.

Q. You remember, do you, distinctly where the "Sardhana" was moored? A. I do.

Q. Did you see any of the scows that were being loaded with drums of creosote?

A. I saw them as I passed by on the steamer.

Q. Did you notice the method of stowage?

A. I did not notice that particularly.

Q. Have you heard the method of stowage described by Mr. Preece, the stevedore, in this case?

A. I have.

Q. Have you heard the evidence as to the location of the lighter that was capsized?

A. I have. [323—152]

Q. State whether the harbor of Eagle Harbor is protected or unprotected.

A. We look upon it as a protected harbor.

Q. Are there any winds or is there any sea, that would have affected this lighter, as she lay alongside the "Sardhana"?

A. I do not think she would have been affected by any wind or sea in that position in which the ship was moored, and the barge moored on the inshore side.

(Testimony of S. B. Gibbs.)

Q. Why, Captain?

A. Because it is close in to land on one side and the ship on the outside, and the creosote works on the other side, and it seems to me pretty hard for the wind to get up any sea that would affect the barge.

Q. What, in your opinion, would cause the capsizing of that barge?

A. I should say it must be water in it.

Q. That is the barge must have had water?

A. The barge must have had water, must have been leaking.

Q. Were you present at any time during the discharge of the "Sardhana"?

A. Only the day that I went on board.

Q. Were they discharging then? A. Yes, sir.

Q. Do you remember whether they were pumping creosote?

A. No, I did not see them pump any creosote.

Cross-examination.

Q. (Mr. BOGLE.) Captain, at the time you went aboard the "Sardhana" with Mr. Walker, was he making a survey of the [324—153] fire damage?

A. I think he had already made his survey. I believe he had been on board before, because he did not make any notes the day I was aboard. I think his survey had been made previously to our going aboard.

Q. At that time you had no particular interest in the matter beyond mere curiosity?

A. That is all.

Q. Did not make a minute examination, as if you

(Testimony of S. B. Gibbs.)

were making a survey?

A. No. I do not suppose I did. I did not look quite as closely.

Q. You do not know, Captain, anything about the condition of the weather on the night this barge cap-sized?

A. No, I do not recollect anything about it.

Q. Captain, in extreme heavy weather outside of the harbor would not there be considerable ground swell get in and reach the vessels inside of the harbor?

A. I never seen much ground swell outside of the harbor, not enough to come in there. I do not know that I have ever seen any ground swell in Eagle Harbor. I cannot recollect that I ever saw any in there.

Q. If there was such a ground swell, Captain, even though the barge was moored on the inshore side of the "Sardhana," it might affect her, if the barge and "Sardhana" were moored together—in other words, it would reach the barge?

A. A heavy ground swell might possibly affect the barge, if there had been any.

Q. You did not examine the barge to see if she had been leaking. Do you know whether or not any repairs were [325—154] made to the barge?

A. No, I do not.

Q. You heard Captain Walker's testimony this morning of the survey he made of this barge, and the fact that she was making no water?

A. Yes, sir.

(Testimony of S. B. Gibbs.)

Q. In this particular suit, Captain, you represent the respondent in this case, don't you, that is, they are members of the board that you represent?

A. Yes, sir.

Redirect Examination.

Q. (Mr. McCLANAHAN.) Would it have been possible for Mr. Walker to have ascertained whether that barge was leaking or not by the inspection and survey which you heard him testify to this morning?

A. It would be rather difficult to find out if the vessel was leaking, the way he stated the survey was made. It would be rather hard work.

Q. What would be the proper method of ascertaining whether that barge leaked or not?

A. Well, our method, if there is a leak and if we cannot locate the leak after looking at the vessel all over, is to put water into the vessel, pump water in and see where the water comes out.

Q. Fill her up.

A. Yes, fill her up as much as is necessary. We frequently do that where we are unable to determine where the leak was.

Q. If the leak is not obvious from inspection, do you know any other method by which it can be determined? [326—155] A. No, I do not.

Q. Are all leaks patent to the eye, in barges?

A. No.

Q. (Mr. BOGLE.) Captain, do you know that Mr. Walker did not use that method to ascertain that fact?

A. No, I do not know, only just what he stated.

(Testimony of S. B. Gibbs.)

Q. You do not know whether or not the barge had water in her when she was taken out on the gridiron?

A. No, I do not.

(Testimony of witness closed.)

It is admitted that the statements of fact contained in the extended protest are taken from the log of the "Sardhana."

Testimony closed. [327—156]

United States of America,  
Western District of Washington,  
County of King,—ss.

I, A. C. Bowman, a Commissioner of the United States District Court for the Western District of Washington, residing at Seattle in said District, do hereby certify, that

The foregoing transcript from page 1 to page 156, both inclusive, contains all of the testimony offered before me by the parties to said cause.

The several witnesses, before examination, were duly sworn to testify the truth, the whole truth and nothing but the truth.

The testimony was reduced to writing by me on the dates shown in said transcript. The exhibits referred to in the transcript and shown in the index are returned herewith.

Proctors for the parties stipulated waiving the reading and signing of the testimony given by the witnesses.

It was also stipulated that the testimony be taken before me as United States Commissioner and returned by me into Court, the same as if an order of

reference had been regularly entered in said cause.

The taxable costs incurred before me are shown in the statement following this certificate.

I further certify that I am not of counsel nor in anyway interested in the result of this suit.

Witness my hand and official seal this 26th day of February, 1913.

A. C. BOWMAN,  
United States Commissioner. [328]

---

[Title of Court and Cause.]

**Final Decree.**

This cause having been duly referred to a Commissioner, and testimony having been taken by the Commissioner and returned to this Court, and the said cause having come on regularly to be heard upon the pleadings and proofs, and counsel for the respective parties having been heard, and the Court having, after due deliberation had in the premises, filed its memorandum decision herein on January —, 1914, in which the Court found and now finds that the respondent, Thames & Mersey Marine Insurance Company, Ltd., is liable to libelant for the total amount of damage claimed in the libel herein;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above-named libelant, Pacific Creosoting Company, do have and recover from the above-named respondent, Thames & Mersey Marine Insurance Company, Ltd., the sum of Eleven Hundred Ninety-seven and 20/100 Dollars (\$1197.20), together with interest on



said sum from the 10th day of August, 1910, at the rate of six per cent (6%) per annum, amounting in all to the sum of Fourteen Hundred and Fifty-one and 56/100 Dollars (\$1451.56), together with its costs herein to be taxed.

Dated at Seattle, Washington, this 26th day of February, 1914.

JEREMIAH NETERER,  
Judge. [330]

[Indorsed]: Final Decree. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Feb. 26, 1914. Frank L. Crosby, Clerk. By E. M. Lakin, Deputy. [331]

---

[Opinion on Exceptions to Libel.]

[Title of Court and Cause.]

IN ADMIRALTY. Libel *in personam*, to recover for partial loss on a policy of marine insurance. Exceptions to libel overruled.

BOGLE, MERRITT and BOGLE, for Libelant.

BRADY & RUMMENS, for Claimant.

HANFORD, District Judge:

This suit is founded on a marine policy insuring a cargo of iron drums containing creosote oil shipped from London, England, to Eagle Harbor in Puget Sound by the British ship "Sardhana." In storms encountered during the voyage, the cargo was battered and damaged and after the arrival at her port of discharge, a gale of wind caused a barge used for lightering the cargo from the ship to land, having a load of 272 drums, to be capsized and by that casu-

alty, four drums were lost and a large salvage expense was incurred. The losses from the causes indicated amount in the aggregate to more than 20% of the total value of the cargo and by a marine survey and report of average adjusters, the respondent's liability was fixed at \$1197.20, which is the amount of insurance on that part of the cargo lost, added to expenses incurred under the sue and labor clause of the policy. [332]

The respondent claims exemption from liability on a condition of the contract known in the insurance business as the "F. P. A. Clause," which reads as follows: "WARRANTED free from particular average, unless the vessel or craft or the interest insured be stranded, sunk or on fire, \* \* \* ." In marine insurance law the phrase "Warranted free from particular average" means that the insurer does not assume liability for a partial loss, and the controverted question in this case is whether the conditional liability in this case became absolute by reason of a fire in the ship after her arrival at her port of discharge. In the libel it is averred that:

" \* \* \* On November 18th, while lying in said Port of Eagle Harbor, and before discharging said cargo, a fire broke out in the after 'tween-decks of said ship, and burned the bulkhead forward of the lazarette, the door thereof and a considerable portion of dunnage and other parts of said ship \* \* \* ."

And in an exhibit attached to the libel there is quoted from the ship's protest, a statement concerning the fire as follows:

“November 18th: Stevedores continued to discharge the cargo and at 5:00 P. M. finished for the day. 291 further drums were discharged. About 9:30 P. M. smoke was discovered issuing from the after hatch, by one of the crew who immediately notified the master and then gave the alarm. This alarm was responded to by the crews of the ship ‘Jupiter,’ the SS. ‘Hornelen,’ and the employees of the Pacific Creosoting Company who brought with them several chemical fire-extinguishers. The Master went below through the lazarette and saw the reflection of the fire over the top of the bulkhead between the after-’tween decks and the lazarette. The after-’tween-decks were still full of cargo. After considerable trouble the fire was extinguished and it was then discovered that the aforesaid bulkhead, together with the door thereof (the bulkhead was built in the vessel) and the dunnage in the after-’tween-decks were burned, and some of the ship’s stores in the lazarette were damaged by water and chemicals. The origin of the fire was not discovered.”

In their argument in support of exceptions to the libel, proctors for the respondent urge that the libelant’s claim is based upon a bare technicality. If so, the claim is nevertheless the assertion of a substantial and legal right, by the contract insurance was paid for and written, the “F. P. A. Clause” makes an exception to the liability of the insurer and [333] is to be construed strictly. 19 Am. &

Eng. Enc. of Law (2d ed.), 1065; *Canton Insurance Office v. Woodside*, 90 Fed. 301. The proctors on both sides of the case have informed the Court that after diligent search they have been unable to find any adjudicated case, English or American, giving an interpretation of the "F. P. A. Clause" since the words "on fire" came into use as a substitute for the word "burnt" in the forms of policy used previous to the decision in the *Glenlivet* case, VII *Aspinwall Mar. Cases*, N. S., 342, 395; 19 *Am. & Eng. Enc. of Law* (2d ed.), 1070. The words "on fire" are not synonymous with the word "burnt," and the change of phraseology, manifestly, was not made without a purpose. Having no precedent to follow this case must be decided according to reason and good sense. The words "on fire" in connection with a ship, do not comprehend, necessarily, every fire that may be on board of the ship, nor do they have the same meaning as "consumed by fire" or "destroyed by burning." They are indicative of a happening whereby the ship is endangered by actual fire burning some part of it and necessitating extraordinary efforts to prevent serious damage. A bulkhead between decks is part of a ship, as an inner partition wall is part of a house. A fire in that part of a ship would justify an alarm and if not properly subdued would certainly be destructive and such a happening would be truthfully described by saying that the ship was "on fire."

It is the opinion of the Court that the libel tenders an issue as to whether the ship was in fact on fire within the meaning of the clause of the policy relied

upon to exempt the respondent from liability, therefore the exceptions must be overruled.

C. H. HANFORD,  
United States District Judge. [334]

[Indorsed]: Opinion. Filed in the U. S. District Court. Western Dist. of Washington. Jan. 16, 1911. R. M. Hopkins, Clerk. [335]

---

[Title of Court and Cause.]

**Memorandum Decision on Exceptions to the Answer  
and on Exceptions to Interrogatories Pro-  
pounded by the Respondent.**

It is the opinion of the Court that paragraphs 7 and 9, containing the first and third alleged affirmative defenses, if considered as allegations of facts and not bare legal conclusions, are insufficient to raise any distinct issue, but merely reiterate in an affirmative form, matter contained in a preceding part of the answer in the form of denials of the averments of the libel. As to said matters, the denials complete the joinder of issues and are sufficient to support evidence rebutting evidence which the libelant will be required to introduce in support of the cause of action alleged.

The policy of insurance sued upon is an English policy, and the respondent has a right to plead the English law applicable thereto, and thereby assume the burden of proving as a fact by competent evidence, that according to English law the contract must be interpreted in a way to preclude the right claimed by the libelant to delete the F. P. A. clause

of the policy, by reason of such facts and circumstances as may be proved by the evidence to be introduced.

It will be ordered that the exceptions to paragraphs 7 and 9 of the answer be sustained; and that the exceptions to [336] paragraph 8 of the answer be overruled.

It is the opinion of the Court that interrogatories 3, 4 and 9 attached to the answer are either superfluous or immaterial, and the exceptions to the same are sustained.

The respondent is not entitled to require the exhibition of documentary evidence, therefore the exception to interrogatory 5 is sustained in so far as it calls for the production of a copy of the report of any survey which may have been made, otherwise said exception is overruled.

The Court overrules the exceptions to interrogatories 1, 2, 6, 7 and 8.

C. H. HANFORD,  
Judge.

[Indorsed]: Memorandum Decision on Exceptions. Filed in the U. S. District Court, Western Dist. of Washington. April 20, 1911. R. M. Hopkins, Clerk. [337]

[**Opinion on Final Hearing.**]

[Title of Court and Cause.]

Libel *in Personam* to Recover for Partial Loss on a Policy of Marine Insurance. Opinion on Final Hearing.

BOGLE, MERRITT and BOGLE, for Libellant.

BRADY & RUMMENS, for Claimant.

NETERER, District Judge.

This action is founded on a marine policy insuring a cargo, 2,753 drums of creosote oil in the British ship "Sardhana," shipped from London, England, to Eagle Harbor in Puget Sound, Washington, "including the risk of craft, and/or raft to and from the vessel." There is also incorporated in the policy by attaching to the margin a printed slip, which is not a part of the printed form, the following: "Warranted free from particular average, unless the vessel or craft or the interest insured be stranded, sunk or on fire. . . ." General average and salvage charges payable according to Foreign statement or York-Antwerp Rules, or 1890 Rules, if in accordance with the contract of affreightment. Including all risks of craft and boats. . . ." "Including all risks of transshipment and of craft, lighterage and/or any other conveyances . . . from the vessel until safely delivered in the warehouse. . . ." In the body of the printed form of the policy: "It is declared and agreed that Corn Fish Salt and Fruit Flour and Seed are warranted free from average

unless general or the ship be stranded, sunk or burnt.”

It is alleged that by reason of storms encountered on the voyage the cargo was battered and damage resulted by loss of creosote oil, and after arriving at the port of discharge a gale caused [338] the barge used for lightering the cargo to capsize, and thereby four drums were lost and a large salvage expense incurred. On November 18, a fire broke out in the after 'tween-decks of the ship while lying in the port of Oak Harbor, behind the bulkhead forward of lazarette. The following was entered in the log of the ship, and is sustained by the evidence:

“November 18th. Stevedores continued to discharge the cargo and at 5 P. M. finished for the day. 291 further drums were discharged. About 9:30 P. M. smoke was discovered issuing from the after hatch, by one of the crew, who immediately notified the master and then gave the alarm. This alarm was responded to by the crews of the ship ‘Jupiter,’ the S. S. ‘Horn-elen,’ and the employees of the Pacific Creosoting Company, who brought with them several chemical fire-extinguishers. The master went below through the lazarette and saw the reflection of the fire over the top of the bulkhead between the after 'tween-decks and the lazarette. The after 'tween-decks were still full of cargo. After considerable trouble the fire was extinguished, and it was then discovered that the aforesaid bulkhead, together with the door thereof (the bulkhead was built in the vessel), and the dunnage



in the after 'tween-decks, were burned, and some of the ship's stores in the lazarette were damaged by water and chemicals. The origin of the fire was not discovered."

The respondent claims exemption from liability on account of the Free from Particular Average warranty; that the "Sardhana" was not "on fire"; that no recovery from the four drums lost on the lighter or for the salvage expenses can be had, because the lighter in question was unseaworthy; that no recovery can be had in any event, it not being shown that any creosote was lost; and that, if lost, it was not on the ship at the time of the fire, and the F. P. A. clause does not apply; and that it is not shown what loss occurred because of perils insured against.

It is strenuously urged that the fire was not sufficient to delete the "F. P. A." warranty, and reliance is placed on the *Glenlivet*, Prob. p. 48, decided in 1893, and cited by the Supreme Court of the United States in *London Insurance v. Camponhia, etc.*, 167 U. S. 149, 156. In the form of policy previous to the *Glenlivet* case the word "burned" was used in the "F. P. A." clause. After this case was decided the words "on fire" were substituted for the word "burned." No case has been suggested where the [339] words "on fire" has ever been before the courts in the same relation in any other case. The change of the words must have been made for a purpose. These words, as stated by Judge Hanford in passing upon the exceptions to the libel in this case in 184 Fed. 949, are not synonymous. The policy sued on in the body thereof with relation to "Corn,"

etc., uses the terms "sunk" or "burned," and in the margin, with relation to the cargo, especially provides sunk or "on fire," clearly evidencing a purpose in the minds of the parties to distinguish from the former term and construction. The testimony of Mr. Beckett, an Average Adjuster of London, England, shows that "under clauses . . . containing the words 'on fire,' it is the practice of the adjusters in England to consider the warranty open if some structural part of the vessel has been actually on fire." It is clear that "on fire" used in the policy was not to be considered as was "burned" in the *Glenlivet* case. The warranty is drawn in the nature of an exception to the liability of the insurer, and is strictly construed against him. Judge Morrow, Circuit Judge, in *Canton Ins. Offices v. Woodside*, 90 Fed. 301, 305, said:

"In the case at bar the intention of the parties is not expressed as clearly as it might be, and hence any doubt that there may be is to be resolved in favor of the insured and against the insurer. A policy of insurance is a contract of indemnity, and is to be liberally construed in favor of the insured. *Yeaton v. Fry*, 5 Cranch 335; *National Bank v. Insurance Co.*, 95 U. S. 673, 679; *Steel v. Insurance Co.*, 2 C. C. A. 463; 51 F. 715, 723; and cases there cited; 1 Arn. Ins. (6th ed.) Sec. 295. If the policy will fairly admit of two constructions, that one should be adopted which will indemnify the insured."

"The company cannot justly complain of such a rule. Its attorneys, officers, or agents pre-

pared the policy for the purpose, we shall assume, both of protecting the company against fraud, and of securing the just rights of the assured under a valid contract of insurance. It is its language which the Court is invited to interpret, and it is both reasonable and just that its own words should be construed most strongly against itself."

National Bank v. Insurance Co., 95 U. S. 673.

"If the company by the use of the expression found in the policy leaves it a matter of doubt as to the construction to be given to the language, the Court should lean against the construction [340] which would limit the liability of the company."

London Assurance v. Camponhia, etc., 167 U. S. 149.

The fire as shown by the evidence was on some structural part of the ship, and endangered the ship by actually burning some part of it, and this was sufficient to open the warranty clause.

The contention that the lighter in question was unseaworthy cannot be sustained. The provisions of the policy include "the risk of craft and/or raft to and from the vessel."

"The warrant of seaworthiness which is implied as to the ship does not extend to lighters employed to land the cargo."

Arnold on Marine Insurance (8th ed.), sec. 689;

19 Am. & Eng. Encyc. of Law (2d ed.), 1002;  
25 Cyc. 645;

Lane v. Nickerson, L. R. 1 C. P. 412.

The burden to show unseaworthiness, if that were material, is upon the respondents.

*Nome Beach, etc. v. Munich Assurance Co.,*  
123 Fed. 820.

There is no testimony before the Court to establish such condition.

The bill of lading or shipping receipt for the cargo recites "shipped in good order and well-conditioned by Blagden, Waugh & Company, in and upon the good ship called the 'Sardhana' . . . 2753 drums of creosote oil." The captain of the ship was asked, "Was not all of the cargo in apparent good order and condition when received on said ship?" "Yes, I rejected what we considered bad drums." The ship's log recites, and these facts are in evidence:

"Sept. 26. It was noticed that by the soundings in the pump well that there was an increase of liquid which appeared to be mostly creosote."

"Nov. 3. Similar conditions were encountered, and the cargo again worked badly."

The witness Wylie testified:

"The creosote escaped into the hold of the vessel partly on account of the severe weather and partly on account of the original weakness of the drums, and the leakage of creosote was to some extent due to the screw bungs working out."

On the arrival of the ship at its port of discharge, it was found that there had been lost during the voyage the difference [341] between the cargo received and that delivered, which is claimed in the libel.

“There is no implied warranty in a policy on goods that the goods are seaworthy for the voyage.”

2 *Arnold on Marine Insurance* (8th ed.), sec. 689.

The ship “Sardhana” being seaworthy when she left London, the cargo in good order and condition when received on the ship, the damage to the drums being external, and it conclusively appearing that there was a loss of cargo, the libellant is entitled to recover his damage.

The *Peter der Grosse*, 1 P. D. 414;

*Nome Beach, etc. v. Munich Insurance Co.*,  
123 Fed. 827.

Under the terms of the policy, and the warranty being open by reason of the ship being “on fire,” the respondents are liable for the total damage claimed.

26 *Cyc.* 682;

*London Assurance Co. v. Camponhia*, 167  
U. S. 149;

1 *Cyc.* 884A;

*Thames & Mersey Marine Insurance Co. v. Pitts*, 7 *Aspinwall’s Maritime Cases* (U. S.) 302.

A decree may be entered accordingly.

JEREMIAH NETERER,

Judge.

[Indorsed]: Opinion on Final Hearing. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 19, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [342]

[Title of Court and Cause.]

**Notice of Appeal.**

To Pacific Creosoting Company, Libelant Herein,  
and to Messrs. Bogle, Graves, Merritt & Bogle,  
Proctors for said Libelant:

Please take notice that the Thames & Mersey Marine Insurance Company, Ltd., respondent herein, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree of the United States District Court for the Western District of Washington, Northern Division, dated, filed and entered in the above-entitled cause on the 26th day of February, 1914, and from the whole of said decree.

Dated February 27, 1914.

EDWARD BRADY and  
GEO. H. RUMMENS,  
McCLANAHAN & DERBY,  
Proctors for Respondent.

Due and full service of within Notice of Appeal acknowledged this 27th day of February, 1914, simultaneous with filing thereof.

BOGLE, GRAVES, MERRITT & BOGLE,  
Proctors for Libelant.

[Indorsed]: Notice of Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 27, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [344]

[Title of Court and Cause.]

**Stipulation Extending Time to July 15, 1914, to File  
Apostles.**

It is hereby stipulated and agreed by and between the parties in the above-entitled cause that the Thames & Mersey Marine Insurance Company, appellant herein, may have to and including the 15th day of July, 1914, within which to procure to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, the apostles on appeal in the above-entitled cause certified by the clerk of the above-named court.

Dated at Seattle, Washington, this 7th day of May, 1914.

BOGLE, GRAVES, MERRITT & BOGLE,

Proctors for Libelant.

McCLANAHAN & DERBY,

BRADY & RUMMENS,

Proctors for Respondent.

[Indorsed]: Stipulation Extending Time to July 15, 1914, to File Apostles on Appeal. Filed in the U. S. District Court, Western Dist. of Washington. May, 8, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [348]

---

[Title of Court and Cause.]

**Assignment of Errors.**

Now comes the Thames & Mersey Marine Insurance Company, Limited, respondent in the above-entitled cause and appellant herein, and says that in

the record, opinions, decisions, decree and proceedings in the above cause there is manifest and material error, and said appellant now makes, files and presents the following assignment of errors on which it relies, to wit:

1. That the Court erred in overruling appellant's exceptions to the libel herein.

2. That the Court erred in holding and deciding on said exceptions that under the facts stated in said libel the fire on the "Sardhana" was sufficient to delete the F. P. A. warranty in the policy of marine insurance sued on herein.

3. That the Court erred in holding and deciding on said exceptions that the words "on fire" were not synonymous with the word "burnt" under the facts as stated in the said libel.

4. That the Court erred in holding and deciding on the evidence herein that the fire on the "Sardhana" was sufficient to delete the F. P. A. warranty aforesaid. [349]

5. That the Court erred in holding and deciding on the evidence herein that the words "on fire" were not synonymous with the word "burnt" under the circumstances of this case.

6. That the Court erred in holding and deciding on the evidence that as said fire was on some structural part of the ship, and endangered the ship by actually burning some part of it, the said F. P. A. warranty was opened, and it also erred in holding that the "Sardhana" was in fact endangered or that any part of her was burnt.

7. That the Court erred in not applying the de-



eisions in the English case of *The Glenlivet*, 7 *Aspinwall Mar. Cases*, N. S., 345, 395, to this case, and in not holding that under the rulings in said case of *The Glenlivet* the "Sardhana" was not "on fire" within the meaning of the policy sued on.

8. That the Court erred in holding and deciding that under the provisions of the policy in suit the lighter employed to land cargo, which capsized, was not warranted seaworthy, and also in holding that the said lighter was not shown by the evidence to have been unseaworthy.

9. That the Court erred in allowing any recovery either for the goods actually lost from said lighter or for the expenses incurred in salvaging part of the goods which capsized therefrom.

10. That the Court erred in holding and deciding that under the evidence all of the cargo was in good order and condition when received on board the "Sardhana," and in not holding and deciding that many of the drums of creosote so shipped were in a defective condition causing the creosote therein to leak therefrom. [350]

11. That the Court erred in not holding and deciding that it was not shown by the evidence that any creosote was lost, and in holding and deciding that as much creosote was lost as was claimed by the libellant.

12. That the Court erred in not holding and deciding that the creosote lost (if any), or at least a very large part thereof, was not on board the "Sardhana" at the time of the fire, and that hence the F.

P. A. warranty of the policy was not opened as to such creosote.

13. That the Court erred in not holding and deciding that it was not shown by the evidence how much, if any, creosote was lost because of perils insured against.

14. That the Court erred in not holding and deciding that, as regards the damaged drums, it was not shown by the evidence that any of such drums damaged by perils insured against were on board the "Sardhana" at the time of the fire, and also in not holding and deciding that libelant had not shown the *quantum* of loss, if any, caused by perils insured against.

15. That the Court erred in attempting to apply to this case rules solely applicable to carriers by water and in assimilating the liability of appellant to that of the "Sardhana" and her owners.

16. That the Court erred in awarding to the libelant herein the sum of \$1197.20 with interest and costs, in that said award was not warranted by the evidence herein and was and is excessive and erroneous.

17. That the Court erred in holding and deciding that as the F. P. A. warranty was opened by reason of the "Sardhana" being "on fire," the appellant was liable for the full damages claimed. [351]

18. That the Court erred in making and entering its final decree in favor of libelant for said full damages claimed, with interest and costs, and in not making and entering its final decree in favor of appellant with costs.

In order that the foregoing assignment of errors may be and appear of record, said appellant files and presents the same, and prays that such disposition be made thereof as is in accordance with law and the statutes of the United States in such cases made and provided, and said appellant prays a reversal of the decree herein heretofore made and entered in the above cause and appealed from.

Dated March 7, 1914.

EDWARD BRADY and  
GEO. H. RUMMENS, and  
McCLANAHAN & DERBY,

Proctors for Appellant.

Due and full service of copy of *with* Assignments of Error acknowledged this 7th day of March, 1914.

BOGLE, GRAVES, MERRITT & BOGLE,

Attorneys for Libelant.

[Indorsed]: Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 7, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [352]

---

[Title of Court and Cause.]

**Stipulation [Re Depositions, etc.].**

It is hereby stipulated and agreed between the parties hereto that in all depositions where the testimony as returned by the certifying officer discloses the question and answer and the same interrogatories are separately attached to the deposition and stipulations, that the duplicate interrogatories, whether direct or cross, may be omitted from the

transcript, and also all stipulations to take depositions may be omitted and all testimony certified shall be considered by the Court of Appeals subject only to the objections noted at the time of taking depositions or hearing of the cause.

It is further stipulated that the ship's door which was introduced in evidence is too cumbersome to be transmitted with the remaining portion of this record, and to that end it is agreed that respondent and appellant Thames & Mersey Marine Ins. Co. will produce the same in the Circuit Court of Appeals at the time of the hearing of this cause.

It is further stipulated that the time for perfecting the record herein for use in the Circuit Court of Appeals, be and the same is hereby extended until the 15th day of August, 1914.

Dated at Seattle, Washington, this 25th day of June, 1914.

BOGLE, GRAVES, MERRITT & BOGLE,  
Proctors for Libelant.

BRADY & RUMMENS,  
Proctors for Respondent. [353]

[Indorsed]: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington. June 25, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [354]

[Title of Court and Cause.]

**Order Extending Time for Procuring Apostles to be  
Filed on Appeal.**

In pursuance to stipulation of the parties hereto and good cause appearing therefor:

It is ordered that the Thames and Mersey Marine Insurance Company, appellant in the above cause may have to and including the 15th day of August, 1914, within which to procure to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, the Apostles on Appeal in the above-entitled cause certified by the Clerk of the above-named court.

Done in open court this 25th day of June, 1914.

JEREMIAH NETERER,

Judge.

O.K.—BOGLE, GRAVES, MERRITT &  
BOGLE,

Proctors for Libelant.

O.K.—BRADY & RUMMENS,

Proctors for Respondent.

[Indorsed]: Order Extending Time for Procuring Apostles to be Filed on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, June 25, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [355]

[Title of Court and Cause.]

**Praeceptum for Apostles.**

To the Clerk of the United States District Court:

Please prepare typewritten apostles to the Circuit Court of Appeals, agreeable to Rules of Ninth Circuit (October 1900, No. 4), in which have it appear:

1. A caption exhibiting the proper style of the court and the title of the cause.
2. Statement showing the time of the commencement of suit (August 12, 1910).
3. The names of the parties.
4. The several dates when the respective pleadings were filed.
5. Statement that the defendant has not been arrested, or bail taken nor property attached.
6. The time the trial was had, and date of Final Decree, to wit: February 26, 1914.
7. The name of the Judges hearing the same.
8. All the pleadings.
9. All the testimony and other proofs, viz.:
  - Libel filed August 10, 1910.
  - Answer of respondent, filed January 31, 1911.
  - Answer of Pacific Creosoting Company to Interrogatories filed May 16, 1911.
  - Amended Answer of Libellant to 5th Interrogatory, filed May 26, 1911. [356]
10. Exceptions to Libel, October 22, 1910.
  - Exceptions to Interrogatories of Libellant, filed 2/16/11.

Exceptions to Answer, filed February 16, 1911.

Order on Exceptions to Answers and to Interrogatories, filed April 29, 1911.

11. All Exhibits, viz.: Libellant's Exhibits "A," "B," "C," "D," "E1," "E2," "E3," "F," "G," "H," "I," "J," "K," "L," "M."  
Respondent's Exhibits, viz.: 1, 2, 3.
12. All depositions, stipulations and interrogatories concerning witnesses and evidence, viz.:  
Depositions and Stipulations M. I. Holman.  
Depositions and Stipulations Fred M. Beal.  
Depositions and Stipulations F. D. Beal.  
Depositions and Stipulations and Interrogatories, Alexander Wallace.  
Depositions and Stipulations and Interrogatories, E. D. Rood.  
Depositions and Stipulations and Interrogatories, Geo. H. Wylie.
13. Testimony reported by A. C. Bowman, U. S. Commissioner.
14. Final Decree, filed February 26, 1914.
15. All opinions of Court, viz.: Opinion or Memoranda, filed January 16, 1911, and April 20, 1911, and January 19, 1914.
16. Order fixing amount of stay bond, filed February 26, 1914.
17. Notice of Appeal and admission of service, filed Feb. 27, 1914.
18. Bond on Appeal and Supersedeas, filed February 27, 1914.

342 *Thames & Mersey Marine Ins. Co., Ltd.*,

19. Order extending time to July 15, 1914. Filed  
May 8, 1914.

20. Assignment of Errors.

21. Stipulation and Order of June 25, 1914.

Dated this 25th day of June, 1914.

BRADY & RUMMENS,  
Proctors for Respondent. [357]

[Indorsed]: Praeceptum for Apostles. Filed in the  
U. S. District Court, Western Dist. of Washington,  
June 25, 1914. Frank L. Crosby, Clerk. By E. M.  
L., Deputy. [358]

---

[Title of Court and Cause.]

**Certificate of Clerk U. S. District Court to Apostles,  
etc.**

United States of America,  
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States  
District Court, for the Western District of Wash-  
ington, do hereby certify the foregoing 358 typewrit-  
ten pages, numbered from 1 to 358, inclusive, to be  
a full, true, correct and complete copy of so much of  
the record, papers, depositions and other proceedings  
in the above and foregoing entitled cause as are  
necessary to the hearing of said cause in the United  
States Circuit Court of Appeals for the Ninth Cir-  
cuit, and as is called for by counsel of record herein,  
as the same remain of record and on file in the office  
of the Clerk of said District Court, and that the same  
constitutes the record on appeal to the said Circuit  
Court of Appeals for the Ninth Circuit from the



District Court of the United States for the Western District of Washington.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [359]

Clerk's fee (Sec. 828 R. S. U. S. as amended by Sec. 6, Act of March 2, 1905) for making record, certificate or return—806 folios at 30c per folio.....	\$241.80
Certificate of Clerk to transcript of record—	
3 folios at 30c.....	.90
Seal to said Certificate.....	.40
Certificate of Clerk to original Exhibits—	
3 folios at 30c.....	.90
Seal to said Certificate.....	.40
	<hr/>
	\$244.40

I hereby certify that the above cost for preparing and certifying record amounting to \$244.40 has been paid to me by Proctors for Appellant, Messrs. Brady & Rummens and Messrs. McClanahan & Derby.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 6th day of August, 1914.

[Seal]

FRANK L. CROSBY,

Clerk.

By Ed M. Lakin,  
Deputy. [360]

[Endorsed]: No. 2459. United States Circuit Court of Appeals for the Ninth Circuit. Thames & Mersey Marine Insurance Company, Limited, a Corporation, Appellant, vs. Pacific Creosoting Company, a Corporation, Appellee. Apostles. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Received and filed August 10, 1914.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.

---

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

No. 2459.

THAMES & MERSEY MARINE INSURANCE  
COMPANY, LIMITED,

Appellant,

vs.

PACIFIC CREOSOTING COMPANY,

Appellee.

**Notice of Filing Apostles on Appeal and Designation  
of Parts of Record to be Printed.**

To the Pacific Creosoting Company, Appellee  
Herein, and Messrs. Bogle, Graves, Merritt &  
Bogle, Its Proctors:

Please take notice that the apostles on appeal in

the above cause were filed in the above-entitled court on the 10th day of August, 1914.

You are further notified that appellant intends to rely upon all of the assignments of error in said record and considers all of said record necessary for the consideration of its said assignments of error, with the exception of the following pages of the record and the following exhibits which appellant does not consider necessary to be printed in said record and desires to have omitted from said record as printed:

- P. 49—Certificate to deposition of M. I. Helman.
- P. 59—Certificate to deposition of Fred N. Beal.
- P. 95—Certificate to deposition of F. D. Beal.
- P. 124—Certificate to deposition of Alexander Wallace.
- P. 137—Certificate to deposition of E. D. Rood.
- Middle of p. 153 and p. 154—Certificate to deposition of G. H. Wylie.
- P. 159 to 170, inclusive—Direct and cross-interrogatories to G. H. Wylie in that said direct and cross-interrogatories also appear in the deposition of said witness.
- P. 171—Index to transcript of testimony in lower court.
- P. 329—Statement of commissioner's costs.
- P. 343—Order fixing amount of bond on appeal.
- P. 345 to 347, inclusive—Bond on appeal.

All original exhibits sent up by the lower court for perusal by the Circuit Court of Appeals, which exhibits under Rule 14, Subdivision 4, of the Circuit Court of Appeals are not required to be printed, and

346 *Thames & Mersey Marine Ins. Co., Ltd.*,

which may be considered as original exhibits even though not printed.

Omit also the extended title of court and cause except on the first page and in the original libel, and insert in place thereof the words "Title of Court and Cause."

Dated August 11th, 1914.

E. B. McCLANAHAN,  
S. H. DERBY,

Proctors for Appellant.

Receipt of a copy of the within Notice, etc., is hereby admitted this 18th day of August, 1914.

BOGLE, GRAVES, MERRITT & BOGLE,

Proctors for Appellee.

[Endorsed]: No. 2459. United States Circuit Court of Appeals, Ninth Circuit. *Thames & Mersey Marine Ins. Co., Ltd.*, Appellant, vs. *Pacific Creosoting Co.*, Appellee. Notice of Filing Apostles on Appeal and Designation of Parts of Record to be Printed. Filed Aug. 24, 1914. F. D. Monckton, Clerk.

---

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

No. 2459.

THAMES & MERSEY MARINE INSURANCE  
COMPANY, LIMITED,

Appellant,

vs.

PACIFIC CREOSOTING COMPANY,

Appellee.

**Stipulation Waiving Printing of Original Exhibits.**

WHEREAS, there are considerable number of exhibits in the above cause sent up to the above-entitled court as original exhibits, and it is deemed unnecessary by the parties hereto that the same should be printed in that those referred to, if any, can be fully described in the briefs therein; now, therefore,

IT IS HEREBY STIPULATED AND AGREED that none of said exhibits so sent up to the above-entitled court as original exhibits need be printed, but that the same may be considered by the Court as original exhibits even though not printed.

Dated August 18th, 1914.

E. B. McCLANAHAN,  
S. H. DERBY,

Proctors for Appellant.

BOGLE, GRAVES, MERRITT & BOGLE,

Proctors for Appellee.

**Order Waiving Printing of Original Exhibits.**

Pursuant to the foregoing stipulation IT IS HEREBY ORDERED that none of the original exhibits sent up as such in the above cause need be printed, but the same may be considered as original exhibits even though not printed.

Dated August 24, 1914.

WM. W. MORROW,

Circuit Judge.

[Endorsed]: No. 2459. United States Circuit Court of Appeals, Ninth Circuit. Thames & Mersey Marine Ins. Co., Ltd., Appellant, vs. Pacific Creosoting Co., Appellee. Stipulation Waiving Printing of Original Exhibits and Order Thereon. Filed Aug. 24, 1914. F. D. Monckton, Clerk.